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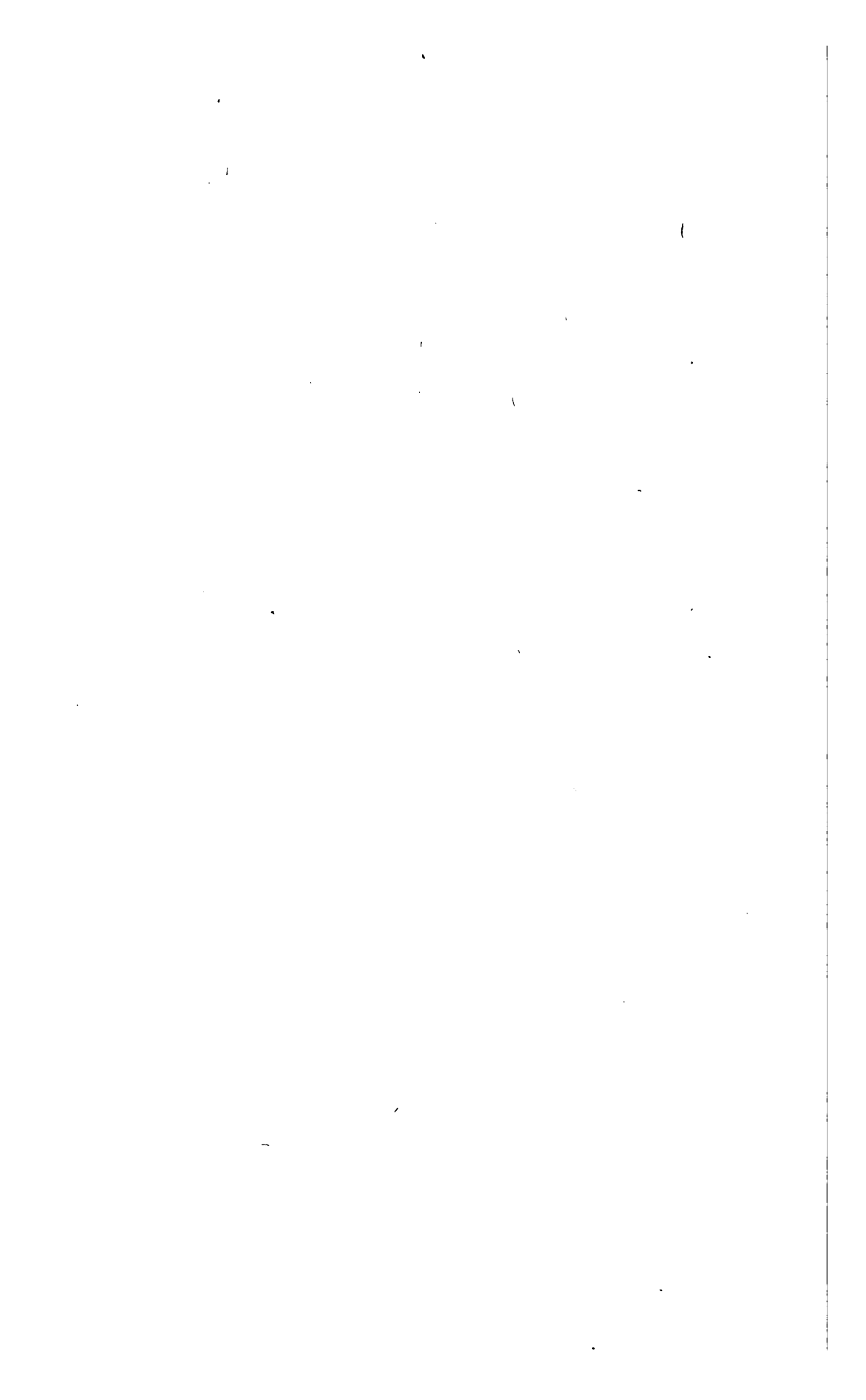
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SEWARD 76
AND
THE DECLARATION OF PARIS

A Forgotten Diplomatic Episode

APRIL-AUGUST, 1861

BY
CHARLES FRANCIS ADAMS

BOSTON

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[The following paper, prepared for the Massachusetts Historical Society, and submitted at its October Meeting, 1912, appears in the printed *Proceedings* of that Society, vol. XLVI. pp. 23-81.]

Rec. Mar. 20, 1913.

SEWARD AND THE DECLARATION OF PARIS.

The period between April 13, 1861, when Fort Sumter fell, and July 21, following, which witnessed the Bull Run catastrophe — a period of exactly one hundred days — constituted the first distinctive stage of our Civil War. Formative, during it the loyal portion of the Union was, so to speak, finding itself. In an excited and altogether abnormal condition morally, it was unreasoning, unreasonable and curiously illogical. As an interval of time, therefore, the period referred to stands by itself, to be treated separately from that which preceded or that which was to follow. Before April 13th and up to that day — strange as the assertion now sounds — the historic fact is that the country, taken as a whole, had no realizing sense of the impending. Though anxiety was great and continually increasing, it was still generally believed that, somehow or in some way, providential if not otherwise, an actual appeal to arms and a consequent internecine struggle would not take place. Too dreadful calmly to contemplate, it could not, and consequently would not, occur.¹ The firing on Fort Sumter dispelled this illusion, and an entire community at last realized the grim, hard facts of a situation truly appalling. Then, so far as the part of the country loyal to the Union was concerned, there ensued the hundred days referred to, — days of artificial excitement and self-delusion. Fired by patriotism and literally drunk with enthusiasm, the North indulged in a most exaggerated self-confidence, combined with an altogether undue depreciation of its opponent.

¹ "Neither party appeared to be apprehensive of or to realize the gathering storm. There was a general belief, indulged in by most persons, that an adjustment would in some way be brought about, without any extensive resort to extreme measures. . . . Until blood was spilled there was hope of conciliation." Welles, *Diary*, I. 10, 12, 35, 172, 355-356.

The conflict was to be short, sharp and decisive. A military walk-over was confidently anticipated; the so-called Confederacy was to be obliterated by one wild rush. The cry of "On to Richmond," first raised by Horace Greeley in the *New York Tribune*, soon became general and irresistible. But the delusion was not confined to the unthinking or less well-informed. Shared to an almost equal extent by those in official position, it was reflected in their attitude and stands recorded in their utterances. This was peculiarly apparent in the management of our foreign relations through the State Department, of which Mr. Seward was the head. The awakening — and it was a terribly rude one — came on the 21st of July, at Bull Run; and from that day the struggle entered on a wholly new phase. The community, at first panic-stricken, then soon sobered. The strength and fighting capacity of the Confederacy had been unmistakably demonstrated; and, the first artificial flush of enthusiasm dispelled, the country addressed itself in a wholly new spirit to the supreme effort to which it at last realized it was summoned. The magnitude and consequent uncertainty of the struggle were realized.

In the course of a somewhat elaborate historical study my attention has recently been drawn to an altogether forgotten diplomatic episode which occurred in that stage of initial crystallization, and to it I propose to devote this paper. As an incident in a most critical period, what I have to describe will, I think, prove not without interest; and, at the time, it was, as I now view it, of a possible importance appreciated neither then nor since.

I recently received a letter from our associate, Mr. Frederic Bancroft, author of the *Life of Seward*, in which, referring to an allusion of mine, he said: "Unless you have taken stand directly against your father and your brother Henry's essay in regard to Seward's and your father's attitude toward the attempted accession of the United States, in 1861, to the declaration of Paris of 1856, I very much wish to argue the point with you, orally, of course."

The allusion recalled the fact, which I had quite forgotten, that Mr. Henry Adams had prepared such a paper as Mr. Bancroft referred to,¹ and, moreover, that I had myself nearly

¹ *Historical Essays*, 237-289.

twenty years ago made large use of it in writing chapter XII entitled "The Treaty of Paris," in the *Life of C. F. Adams*, in the *American Statesman Series*. Mr. Bancroft had subsequently gone over the same ground, but I could not recall the conclusions he had reached. In fact, the whole subject had passed completely out of my memory. I accordingly once more reverted to it, carefully re-reading Mr. Henry Adams's paper, the chapter (XXXI) relating to the episode in Mr. Bancroft's *Seward*, and finally my own effort of a score of years since. The general historians had not apparently deemed the incident worthy even of passing notice. In this, as will presently be seen, I do not concur.

As usual, the more thoroughly I now studied the records, the more important, involved, and suggestive the episode became. Above all, I was amazed and mortified at the superficial character of my own previous treatment; for I now found myself compelled to most unwelcome conclusions, not only different from those I had previously set forth, but altogether at variance with those reached by Mr. Henry Adams in his carefully prepared study. Though peculiarly well-informed as to the facts, having himself been practically at the time concerned in what occurred, I now found reason to conclude he had written from the point of view of an active and interested participant; and since he published his paper fresh material had come to light. I so wrote at much length to Mr. Bancroft, with whose subsequently prepared narrative and conclusions I now find myself in more general, though not in complete, accord. That letter to Mr. Bancroft supplies the basis of what I here submit. In submitting it, however, I wish to premise that in it no regard has been paid to the literary aspect, nor can it even be considered a finished historical study. Rather in the nature of a compendium or syllabus, into it I have put a mass of somewhat heterogeneous matter with a view to making the same more accessible in future to myself, as well as other investigators of a highly interesting historical period. I regard the result, therefore, largely as raw material, in the accumulation and presenting of which I have to acknowledge much and efficient assistance received from our Editor.

For an intelligent comprehension of what is to follow in its

far-reaching significance and somewhat dramatic interest, it is, however, necessary to go pretty far back, — so to speak, to begin at the beginning. Attention has already been called to the date of the bombardment and fall of Fort Sumter, — April 13, 1861. Events then followed rapidly. Sumter was surrendered on Saturday, and the papers of the following Monday the 15th, contained the proclamation of the President calling for troops, and summoning Congress to meet July 4th in extra session.¹ Two days later, the 17th, Jefferson Davis responded from Montgomery by declaring the intention of the Confederacy immediately to issue letters of marque, authorizing depredations by privateers on the ships and commerce of the loyal States.² On the 19th, the Friday of the week following the fall of Sumter, President Lincoln issued yet another proclamation announcing a blockade of the ports of all the seceding States. In this proclamation it was stated that the blockade was to be conducted “in pursuance of the laws of the United States and of the law of nations in such case provided”; and, finally, to meet the threatened retaliation through privateers and privateering, it was added “that if any person under the pretended authority of such [Confederate] States . . . shall molest a vessel of the United States, or the persons or cargo on board of her, such person will be held amenable to the laws of the United States for the prevention and punishment of piracy.”³ Two international issues were thus presented and brought to the front within the first week following the fall of Sumter. They were the issues of belligerency in case of a blockade of the first magnitude, proclaimed to be enforced “in pursuance of the law of nations,” and the logically consequent issue naturally involved in what is known as privateering. Five days later, on April 24th, a circular addressed to the representatives of the United States in all the principal capitals, was issued from the State Department calling attention to the attitude now proposed to be assumed by the United States towards what was known as the Declaration of Paris.

This so-called Declaration was an outcome of the Crimean War. When, in the summer of 1853, that war broke out, nearly

¹ *Messages and Papers of the Presidents*, VI. 13.

² *Messages and Papers of the Confederacy*, I. 60.

³ *Messages and Papers of the Presidents*, VI. 14.

forty years had elapsed since the close of the Napoleonic period: a period during which, as is well known, a system of semi-barbarous rules of so-called international law had been ruthlessly enforced by all belligerents. In 1853 those rules were still recognized as obligatory and enforceable, though in abeyance. As an historical fact, it was undeniable that, on the high seas, piracy was the natural condition of man; and, when the artificial state of peace ceased, into that condition as between those involved in the strife nations relapsed. To ameliorate this state of affairs, both possible and imminent, and to readjust in some degree the rules of international law to meet changed commercial conditions, Great Britain and France, on the outbreak of the war with Russia, agreed to respect neutral commerce, whether under their own flags or that of Russia; and, at the close of the war, the Congress of Paris adopted, in April, 1856, a Declaration embracing four heads:

1. Privateering is and remains abolished.
2. The neutral flag covers enemy's goods, with the exception of contraband of war.
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag.
4. Blockades in order to be binding must be effective; that is to say, maintained by forces sufficient really to prevent access to the coast of the enemy.

Great Britain, France, Prussia, Russia, Austria and Turkey adopted this mutual agreement, and pledged themselves to make it known to States not represented in the Congress, and invite their accession to it, on two conditions: (1) That the Declaration should be accepted as a whole, or not at all; and (2) That the States acceding should enter into no subsequent arrangement on maritime law in time of war without stipulating for a strict observance of the four points. On these conditions every maritime power was to be invited to accede, and had the right to become a party to the agreement. Accordingly nearly all the nations of Europe and South America in course of time notified their accession, and became, equally with the original parties contracting, entitled to all the benefits and subject to the obligations of the compact.

Among the rest, the government of the United States was

invited to accede, and, like the other powers, had the right so to do by simple notification. This was during the Pierce administration; and Mr. Marcy, then Secretary of State, in due time (July 28, 1856) informed the governments interested that the President could not abandon the right to have recourse to privateers, unless he could secure the exemption of all private property, not contraband, from capture at sea;¹ with that amendment the United States would become a party to the Declaration.

In other words, in addition to the points agreed on at Paris the United States contended for the establishment of the same principle on the sea that obtained on land, to wit: the exemption from capture or unnecessary molestation of all private property, not contraband of war, including ships. The last great vestige of the earlier times of normal piracy was, by general consent, to be relegated to the past. With the exception of Great Britain, the more considerable European maritime powers made no objection to the Marcy amendment. For obvious reasons connected with her past history and naval preponderance, Great Britain was understood to oppose it.

President Buchanan's was essentially an "Ostend manifesto," or filibuster, administration. As such, it felt no call to the proposed modifications;² but when Lincoln succeeded

¹ [This policy goes back to 1823, when President Monroe recommended it in his message of 1823. "I trust you will not take, as I am told some legislative statesmen have done, the proposition mentioned in the message for abolishing *private war upon the sea* to be a mere offer to abolish *privateering*. You will understand it as it is meant, a project for the universal exemption of private property upon the ocean from depredation by war." *John Quincy Adams to Robert Walsh*, December 3, 1823. ED.]

² [The following has an historical interest in this connection. September 5, 1861, Richard Cobden wrote to James Buchanan saying: "The subject of the blockade is becoming more and more serious. I am afraid we have ourselves to blame for not having placed the question of belligerent rights on a better footing." He then asked a question about the attitude of the United States towards the Declaration of Paris. Buchanan replied, December 14, 1861: "In reference to your question in regard to blockade, no administration within the last half-century, up to the end of my term, would have consented to a general declaration abolishing privateering. Our most effectual means of annoying a great naval power upon the ocean is by granting letters of marque and reprisal. We could not possibly, therefore, have consented to the Paris declaration which would have left the vessels (for example of Great Britain or France) free to capture our merchant vessels, whilst we should have deprived ourselves of the employment of the force which had proved so powerful in capturing their merchant vessels. Hence the proposition of Mr. Marcy to abolish war upon private property altogether on

Buchanan the aspect of the proposition had, from the United States point of view, undergone dramatic change. Threatened with Confederate letters of marque, the government also found itself engaged in, and responsible for, a blockade of the first magnitude. Under such circumstances, it was plainly impossible to forecast all contingencies, and it was very open to question what policy might in certain exigencies prove the more expedient; but, on the whole, it seemed to the administration wisest to endeavor to conciliate Europe.

The question immediately arises, What was intended by the word "privateering" as used in the Declaration? On that would seem, in the present case, to have depended the attitude of the Diplomat at the time and the conclusions of the Historian since; for on this point strange confusion runs through all the correspondence, memoirs and records. Nor is this confusion peculiar to our Civil War state papers and literature. It is, on the contrary, very noticeable in the writings connected with our anterior wars, both that of Independence and that of 1812-1815. In the earlier cases it clearly existed in the minds of those engaged in the discussion. In the case, however, of the Civil War, the confusion was apparently due in quite as great a degree to a desire to ignore and confound manifest and well-recognized distinctions as to any real lack of a correct understanding of terms.

Up to the middle of the last (nineteenth) century, there were various recognized forms of ocean depredation.¹ Enumerating these in order, they were carried on

1. By pirates, so called, through what was known as "piracy." A familiar term, this calls for no definition.
2. By what were known as "corsairs."
3. By privateers, sailing in time of war under letters of marque issued by a belligerent.
4. By regularly commissioned ships of war, belonging to a recognized belligerent, under whose flag they sailed.

the ocean, as modern civilization had abolished it on the land." *Works of James Buchanan* (Moore), XI. 218, 234. Ed.]

¹ Throughout the preparation of this paper constant use has been made of Prof. J. Bassett Moore's invaluable *Digest of International Law* (1906), and especially of the collection of authorities and material under the two heads of *Privateers* and the *Declaration of Paris*, VII. 535-583, secs. 1215-1221. Only in exceptional cases, therefore, is special reference made to this compendium.

There has more recently come into existence a class of vessels known as "commerce destroyers," constructed not for combat primarily, but for the purpose of inflicting injury on the commercial marine of a hostile power with which the belligerent owning the "commerce destroyer" is at war. The term, however, refers only to a type of naval construction. It in no way affects legal classification. The "commerce destroyer" is simply a public cruiser adapted to a specific purpose.

On these distinctions the whole issue depends. In the minds, however, of those who carried on the negotiation of 1861, the distinctions do not seem to have been clear; and the failure then to observe, or the endeavor to ignore and obscure them, complicated the whole diplomatic situation, and at more than one juncture gravely threatened our foreign relations.

The ownership of the vessel sailing under a letter of marque was, then, of the very essence of privateering. This, in 1861, established the distinguishing line; and so lay at the basis of Article I of the Declaration. The privateer thus held, so to speak, a betwixt-and-between position; a privately owned maritime adventure, its letter of marque, issued by a belligerent, gave it a legal status. But for that it would have been subject to treatment as a pirate. The distinction is, too, especially important to be borne in mind while discussing the problems which developed from the maritime operations conducted during the Civil War, inasmuch as the value of the privateer, and the inducement to "privateering," then depended on success in the capture of prizes; which prizes, when duly condemned, were to be the plunder, or property, of the individual owner of the privateer. They did not, nor do they belong to the Government that issued the letters of marque under which the privateer sails. An individual venture, those concerned in the privateer were to a degree irresponsible. The point was very elaborately discussed later in the War, by Secretary Welles, in a series of letters addressed to Secretary Seward, when it was proposed to issue letters of marque to Union adventurers supposed to be anxious to chase the Confederate cruisers.¹

The preservation of the prize, with a view to its condemnation as such, is, therefore, the great and essential inducement

¹ Welles, *Lincoln and Seward*, 145-173; *Diary*, I. 246-262.

to privateering. From mere commerce destruction the privateer gets no advantage. This it was, combined with the absence of any open port where condemnation proceedings were possible, which almost at once put an end to the whole scheme of Confederate privateering. The obvious fact that it must so do was pointed out and emphasized by the first Confederate Commissioners — Yancey, Rost and Mann — as early as August 14, 1861, in their elaborate communication to Earl Russell of that date. That Great Britain and France had closed their ports to prizes of Confederate privateers sailing under letters of marque, was in the following terms then made subject of grave remark and implied remonstrance:

The undersigned, however, received with some surprise and regret, the avowal of Her Britannic Majesty's Government that in order to the observance of a strict neutrality, the public and private armed vessels of neither of the contending parties would be permitted to enter Her Majesty's ports with prizes. The undersigned do not contest the right of the British Government to make such regulations, but have been disposed to think that it has been unusual for Her Majesty's Government to exercise such right, and that in this instance the practical operation of the rule has been to favor the Government at Washington, and to cripple the exercise of an undoubted public right of the Government of the Confederate States. This Government commenced its career entirely without a navy. Owing to the high sense of duty which distinguished the Southern Officers, who were lately in commission in the United States Navy, the ships which, otherwise, might have been brought into Southern ports, were honorably delivered up to the United States Government, and the Navy, built for the protection of the people of all the States, is now used by the Government at Washington to coerce the people and blockade the ports of one-third of the States of the late Union. The people of the Confederate States are an agricultural and not a manufacturing or commercial people. They own but few ships. Hence there has not been the least necessity for the Government at Washington to issue letters of marque. The people of the Confederate States have but few ships and not much commerce upon which such private armed vessels could operate. The commodities produced in the Confederate States are such as the world needs more than any other, and the nations of the Earth have heretofore sent their ships to our wharves, and there the merchants buy and receive our cotton and tobacco. But it is far otherwise with the people of

the present United States. They are a manufacturing and commercial people. They do a large part of the carrying trade of the world. Their ships and commerce afford them the sinews of war, and keep their industry afloat. To cripple their industry and commerce; to destroy their ships or cause them to be dismantled and tied up to their rotting wharves, are legitimate objects and means of warfare. Having no navy, no commercial marine, out of which to improvise public armed vessels to any considerable extent, the Confederate States were compelled to resort to the issuance of letters of marque, a mode of warfare as fully and as clearly recognized by the law and usage of nations, as any other arm of war; and most assuredly more humane and more civilized in its practice than that which appears to have distinguished the march of the troops of the Government of the United States upon the soil and among the villages of Virginia. These facts tend to show that the practical working of the rule that forbids the entry of the public and private armed vessels of either party into British ports with prizes, operates exclusively to prevent the exercise of this legitimate mode of warfare by the Confederate States, while it is to a great degree a practical protection to the commerce and ships of the United States.

So much for privateers and privateering. A pirate, on the other hand, is a common enemy of mankind. He sails under no flag, and is responsible to no Government. A robber on the high seas, he is simply an outlaw.¹

The public announcement, immediately after the firing on Sumter, that the Confederacy proposed to issue letters of marque naturally caused great alarm to the Union authorities, and the ship-owners of the loyal States. Under the conditions prevailing in April, May and June, 1861, it well might. W. H. Russell in his *Diary* gives a lively and picturesque account of the state of feeling then existing at Montgomery and of the

¹ Almost every known term of opprobrium can be found in the Civil War literature, official and private, applied to vessels sailing under the flag of the Confederacy. They are thus not infrequently designated "corsairs." This again was a misuse of terms; for, while a "corsair" is, strictly speaking, a "pirate," the word in general acceptance signifies a description of piratical craft long since passed out of existence. The corsair is especially associated with the Barbary Powers, so called, and preyed upon foreign commerce not protected by those powers; but vessels known as corsairs were, as a rule, commissioned by the Barbary States, and sailed under their flags. They in a way constituted a navy. The corsair passed out of existence about 1816 with the decay in power of the Barbary States. The pirate was simply exterminated, like other outlaws, robbers and free-booters.

views, knowledge and intentions of the Confederate authorities as respects letters of marque. What he then wrote did not at the time appear in his letters published in the *Times*; and that for obvious reasons. A neutral and a newspaper correspondent, he was under a well-understood obligation to disclose nothing, not already public, which would give information or contribute aid to the other party to the conflict. So in the London *Times* of May 30th, what is now about to be quoted from the Diary, published eighteen months later, appeared only in the following compressed and extremely non-committal form: "On leaving the Secretary I proceeded to the room of the Attorney-General, Mr. Benjamin, a very intelligent and able man, whom I found busied in preparations connected with the issue of letters of marque. Everything in the office looked like earnest work and business."

Dates are here important as bearing on the conditions then prevailing, and the consequent state of mind and feeling of those upon whom rested the responsibility for action. The brief extract just quoted appeared, it will be noticed, in the issue of the London *Times* of May 30th. On the 6th and 9th of the same month Russell was making in his Diary the following more detailed record:

Mr. Benjamin [then acting as Attorney-General of the Confederacy] is the most open, frank, and cordial of the Confederates whom I have yet met. In a few seconds he was telling me all about the course of Government with respect to privateers and letters of marque and reprisal, in order probably to ascertain what were our views in England on the subject. I observed it was likely the North would not respect their flag, and would treat their privateers as pirates. "We have an easy remedy for that. For any man under our flag whom the authorities of the United States dare to execute, we shall hang two of their people." "Suppose, Mr. Attorney-General, England, or any of the great powers which decreed the abolition of privateering, refuses to recognize your flag?" "We intend to claim, and do claim, the exercise of all the rights and privileges of an independent sovereign State, and any attempt to refuse us the full measure of those rights would be an act of hostility to our country." "But if England, for example, declared your privateers were pirates?" "As the United States never admitted the principle laid down at the Congress of Paris, neither have the Confederate States. If England thinks fit to declare privateers under our flag

pirates, it would be nothing more or less than a declaration of war against us, and we must meet it as best we can." . . . As I was going down stairs, Mr. Browne called me into his room. He said that the Attorney-General and himself were in a state of perplexity as to the form in which letters of marque and reprisal should be made out. They had consulted all the books they could get, but found no examples to suit their case, and he wished to know, as I was a barrister, whether I could aid him. I told him it was not so much my regard to my own position as a neutral, as the *vafri inscitia juris* which prevented me throwing any light on the subject. There are not only Yankee ship-owners but English firms ready with sailors and steamers for the Confederate Government, and the owner of the *Camilla* might be tempted to part with his yacht by the offers made to him. [Mr. Browne had three days before assured Lord Russell that] the Government had already received numerous — I think he said four hundred — letters from ship-owners applying for letters of marque and reprisal. Many of these applications were from merchants in Boston, and other maritime cities in the New England States.¹

In studying the history of what then occurred and the considerations which influenced the policy and utterances of those responsible, as were Davis and Seward, for the course of events, the foregoing is distinctly illuminating. It throws a penetrating light on a condition of affairs now wholly matter of the past, but one necessary to bear in mind if the course pursued by those public characters is to be understood, much more if an historic justice is to be meted out to them. The essential fact is, and it is apparent from the foregoing extract, that in May, 1861, Judah P. Benjamin on the one side, and W. H. Seward on the other, took up a line of policy exactly where it had been dropped on the conclusion of the treaty of Ghent, in December, 1814. Confronted by a new and quite unforeseen situation, they insensibly reverted to the state of affairs which had existed half a century before, and the methods adopted in dealing with it. They failed, and most naturally failed, to grasp the fact that nearly every condition had changed; and, consequently, they had to grope their way somewhat blindly and altogether tentatively to a realizing sense of this fact. During the intervening half-century steam had supplanted wind as the essential factor in naval operations; and this fact, under the international con-

¹ Russell, *My Diary, North and South*, chapters XXXII-XXXIII.

ditions which prevailed throughout our Civil War, set at naught all the hopes and anticipations of Mr. Benjamin, and, had he from the first fully realized what it implied, would have justified Mr. Seward in dismissing his apprehensions, so far as injury from privateers was concerned. In other words, what Benjamin hoped for and Seward feared was the fitting out at individual cost in Confederate and neutral ports of a swarm of cruisers who would in view of the illicit profits to be derived therefrom prey on American commerce, repeating the experience of the wars anterior to 1815. It was this class of venture to which the first article of the Declaration of Paris was meant to apply, — the fitting out and maintenance on the sea of privately owned cruisers sailing under letters of marque. It in no way applied to vessels, whether commerce destroyers or others, built, equipped, armed and commissioned by a recognized belligerent. As a matter of fact, therefore, and under the international conditions maintained throughout our Civil War, the provision of the Declaration of Paris inhibiting privateering, had it been in force, would have proved inoperative; and it would have proved inoperative simply because, contrary to the hopes and expectations of Mr. Benjamin on the one side, and the fears and apprehensions of Mr. Seward on the other, privateering, within the meaning of the Declaration of Paris, cut no figure.

Why it thus cut no figure is obvious. The British and French proclamations of belligerency, and consequent neutrality, of May 13 and June 10, 1861, solved the difficulty and, though undesignedly, solved it under the altogether novel maritime conditions then existing in favor of the United States. Privateers sailing under letters of marque could then by the old and established maritime usage be fitted out in either neutral or Confederate ports, sailing therefrom. As matter of fact, however, both were practically closed. The last, the Confederate ports, were closed by a blockade, made possible by steam, to either the egress of armed vessels, whether public or private, or the ingress of such vessels, or any prizes that might be captured by them. So long, therefore, as the blockade could be effectively maintained, or, in other words, so long as the European naval powers did not actively intervene to put an end to the ocean mastery of the Union, that source of danger was sealed up. Practically, also, the neutral ports were equally

closed; for not only was the fitting out of privateers, as also of commissioned cruisers, in disregard of neutrality, and so illegal, but if an evasion of the law was successful or even connived at, the bringing in of prizes was forbidden. The entire inducement and incentive to privateering, in the sense of the Declaration of Paris, was thus cut off. So far as privateering, therefore, is concerned, whether with the ports of the Confederacy or neutral ports as a basis, everything depended on the blockade, and the observance as respects prizes of foreign neutrality; and on that neutrality, and its continual observance, the blockade itself was dependent. Consequently, everything in the struggle from the outset, privateering of course included, hinged on what is known as Sea Dominion.

So far, however, as the present study is concerned, the one important result thus far reached is that, apparently, the first article of the Declaration of Paris had, under conditions then prevailing, so little practical application to maritime operations during the Civil War as to constitute in them but a negligible quantity. The Confederate commissioners in the extract just given from their communication to the British Foreign Secretary set forth the situation in terms of moderation when they said that the Southern States were "neither a manufacturing nor a commercial people, . . . having no navy, no commercial marine, out of which to improvise public armed vessels to any considerable extent." Captain J. D. Bulloch, the Confederate naval agent and representative in Europe throughout the struggle, writing in 1883, stated the case far more correctly. He said: "It was impossible to build armored vessels in the Confederate States for operations on the coast; — neither the materials nor the mechanics were there; and besides, even if iron and skilled artisans had been within reach, there was not a mill in the country to roll the plates, nor furnaces and machinery to forge them, nor shops to make the engines." ¹ Under such conditions the most the Confederacy could accomplish within itself was to construct rude floating batteries, propelled by most insufficient engines, and adapted to inland-water operations both defensive and offensive, — vessels of the type of the *Virginia*, at Norfolk, and the *Tennessee*, at Mobile, in no way fit for ocean service. Nor were conditions more

¹ Bulloch, *Secret Service*, I. 380.

favorable for the proper fitting out of a privateering fleet. Bulloch subsequently wrote: "It is quite safe for me to state that at the beginning of the year 1861 there was not, within the whole boundary of the Confederacy, a single private yard having the plant necessary to build and equip a cruising ship of the most moderate offensive capacity."¹

Under such conditions, domestic and foreign, Confederate privateering within the meaning of the Declaration of Paris died an early and natural death.² As prizes could not, because of the blockade, be sent into Confederate ports for purpose of condemnation and sale, and as all foreign ports were closed to them, the inducement ceased to exist. The record of Confederate privateering proper can, therefore, be briefly recounted.

Early in May, 1861, at the outset of troubles, a rumor got abroad that an iron steamer, the *Peerless*, equipped on the Great Lakes, had been bought by the Confederate Government, preparatory to being sent to sea to operate on American commerce. Secretary Seward was at this time, as we now know, in an irritable state of mind, and one decidedly aggressive. The course of domestic events was not going as he had planned it should go; his position in the Cabinet was anomalous; his leadership was challenged; his influence, as the natural result of frequent forecastings invariably proved mistaken in the result, was plainly waning both in Washington and the country at large. Temporarily, at any rate, his prestige was distinctly impaired. Not unnaturally, also, his views at this stage of the conflict as to the foreign policy best to be adopted under circumstances altogether unprecedented were, to say the least, inchoate. So he, head of the Department of State, now sent a telegraphic order to all naval officers of the United States to seize the *Peerless* "under any flag, and with any papers," if they had probable information that she had been sold to agents of the Confederacy. In consequence of a vigorous protest against such a high-handed measure immediately filed by the British Minister, the Secretary, however, the same day wrote to Lord Lyons that if the information on which action was taken "proved to be incorrect, full satisfaction will be promptly given."³ And even in this formal

¹ Bulloch, *Secret Service*, I. 22.

² *Seward to Adams*, May 28, 1862. *Diplomatic Correspondence*, 1862, 101.

³ *Parliamentary Paper*, North America, No. 1, 1862, 31-33.

paper the usual confusion of thought and expression was perceptible, for it was stated that the ship in question was rumored to have been sold to the *de facto* insurgent government "to be used as a privateer." There was a distinctly humorous element in the outcome of this initial episode, illustrative of the way in which important public business was then transacted. Lord Lyons in due time reported to Earl Russell, "It turned out that the ship had all the time been purchased by the United States government itself," and this purchase had been "the cause of proceedings of the vessel which were looked upon as suspicious."¹

So far as my investigations enable me to form an opinion, there is thus no case of a vessel actually going out from any foreign port equipped as a privateer to sail under Confederate letters of marque. In every instance the vessel so equipped and going to sea was the property of the Confederacy, commissioned as such, and intended to perform the part of a modern commerce destroyer.

The only privateers, properly so classified, which, sailing under letters of marque, appeared upon the ocean and committed ravages on American commerce, were vessels equipped very early in the war in Confederate ports, and sent to sea therefrom. This phase of the struggle has been exhaustively and satisfactorily treated by J. T. Scharf in his *History of the Confederate Navy*.² The author, also, therein draws the distinction already referred to:

A privateer, as the name imports, is a private armed ship, fitted out at the owner's expense, but commissioned by a belligerent government to capture the ships and goods of the enemy at sea, or the ships of neutrals when conveying to the enemy goods contraband of

¹ *Lyons to Russell, Ib.*, 115. This was not the only or most important instance in which, during the early weeks of the Lincoln administration, the functions of the Navy Department were without consultation assumed by the Department of State. In the *Welles Diary* (i. 23-25) there is an interesting account of a similar proceeding, leading at a most critical juncture to consequences of far greater moment. Secretary Welles, probably with undue severity, subsequently wrote (*Diary*, i. 204) of Mr. Seward: "He gets behind me, tampers with my subordinates, and interferes injuriously and ignorantly in naval matters, not so much from wrong purposes, but as a busybody by nature. I have not made these matters subjects of complaint outside and think it partly the result of usage and practice at Albany." See, also, *Ib.*, ii. 160.

² Chapter iv. 53-93. Second edition. 1894.

war. A privateer differs from a pirate in this, that the one has a commission and the other has none. A privateer is entitled to the same rights of war as the public vessels of the belligerent. A pirate ship has no rights, and her crew are liable to be captured and put to death by all nations, as robbers and murderers on the high seas. }

In examining the list in this book given of vessels fitted out and sailing from Confederate ports under letters of marque during the first summer of the War, it is curious to observe how closely the traditions of 1812-1815 were followed. The vessels were in greatest part mere schooners, hastily equipped and insufficiently armed. Fifty years behind the times, and relying solely on canvas, they were at the mercy of ships propelled by steam. The following is, for instance, an individual experience:

The revenue cutter *Aiken*, which had been seized in Charleston by the authorities of South Carolina before the firing on Fort Sumter, was fitted out as a privateer, and called the *Petrel*, and placed under the command of Capt. Wm. Perry. On July 27th the privateer schooner sailed out of Charleston, and stood for the U. S. frigate *St. Lawrence*, which she mistook for a merchantman, as all her ports were closed. When the *Petrel* got within range she fired three shots without doing any damage. The *St. Lawrence* returned with shot and shell a terrific fire, one shell exploding in the hull of the *Petrel*, and sinking her instantly. The boats of the frigate were lowered, and picked up thirty-six out of forty of the privateer's crew, who were taken aboard, and their feet and hands heavily manacled. The remaining four were drowned.¹

During the first months of the war, and before the blockade became really effective, quite a number of these privateers got to sea, and some of their captures — sent into Confederate ports — were there duly condemned and sold. Others were released after being bonded; but the greatest number of vessels captured were scuttled and otherwise destroyed. The injury thus sustained by the United States merchant marine was undoubtedly considerable, but in largest part due to the alarm occasioned, and the immediate consequent transfer of American shipping to foreign ownership. As the war progressed and the blockade became more effective, conditions produced

¹ Scharf, 86.

their natural results. Privateering was abandoned as both perilous and unprofitable, and the maritime activity and spirit of adventure of the Confederacy turned in the direction of blockade running as at once less dangerous and far more remunerative. Privateering within the scope of Article I of the Treaty of Paris may, therefore, be said to have ceased to be a factor in the operations of the Civil War by the close of 1861.¹

Premising these distinctions, principles and facts, it is now proper to return to the narrative and the sequence of events.

The British proclamation of belligerency, as it is called, or more properly the proclamation of neutrality in the conflict which had developed, with the recognition of a belligerent character in both parties thereto, was made public in London during the week (May 15, 1861) following Mr. Russell's visit at the office of Attorney-General Benjamin, at Montgomery; and Secretary Seward was simultaneously formulating a policy, the circular in relation to the accession of the United States to the Declaration of Paris having been sent out on the 24th of April, or some three weeks before.

In the interim had occurred the tumultuous popular uprising of the loyal States consequent upon the attack on Sumter. The stage of incertitude and resulting panic had passed away, troops, such as they were, were pouring into Washington, and the country was well entered on the intermediate, over-confident and self-inflated stage of the conflict referred to in the earlier portion of this paper. Secretary Seward shared to the full in

¹ "In the Civil War . . . the rebel government offered its letters of marque; but, as nearly all the maritime powers had warned their subjects that if they served in privateers in the war, their governments would not interfere to protect them, and as the United States had threatened to treat such persons as pirates, and the naval power of the United States was formidable; no avowedly foreign private armed vessels took letters of marque; and the ostensibly Confederate vessels were commissioned as of its regular navy." Dana, *Wheaton*, 456n. "One popular error pervades all which has been said or written, on both sides of the line, about the Confederate navy. . . This is the general title of 'privateer' given to all vessels not cooped up in southern harbors. . . . There was a law passed, regulating the issue of letters of marque; and from time to time much was heard of these in the South. But [with the exception of the] 'Jeff Davis' not more than two or three ever found their way to sea, and even these accomplished nothing. At one time, a company with heavy capital was gotten up in Richmond, for the promotion of such enterprises; but it was looked upon as a job and was little successful in any sense." De Leon, *Four Years in Rebel Capitals*, 262.

these feelings, and that he did so was manifest both in his utterances and his official despatches. Acting, it would appear, under the impulse of the moment, and without sufficiently informing himself as to the character of the action taken by the British Government, or the consequences to be apprehended therefrom, Mr. Seward not only now assumed high ground, but the ground by him taken could by no possibility be maintained unless the most sanguine anticipations of the Union authorities were fulfilled in the immediate future, those anticipations in no way making provision for an unexpected adverse catastrophe. Accordingly, the Secretary (May 17th) set to work drafting what he while engaged upon it described in a familiar letter to a member of his family as a "bold remonstrance before it is too late."¹ His remonstrance took the form of the despatch No. 10 of May 21st, addressed to Mr. Adams.² It is unnecessary for present purposes to refer to it in detail. It is sufficient to say that upon its receipt and first perusal Mr. Adams wrote in his Diary: "The Government seems almost ready to declare war with all the powers of Europe, and almost instructs me to withdraw from communication with the ministers here in a certain contingency. . . . I scarcely know how to understand Mr. Seward. The rest of the Government may be demented for all I know; but he surely is calm and wise. My duty here is in so far as I can do it honestly to prevent the irritation from coming to a downright quarrel. It seems to me like throwing the game into the hands of the enemy."³ In the despatch referred to the Secretary, in addition to the suppression of domes-

¹ *Seward at Washington*, II. 575-576.

² The general tenor of this despatch was known at the time to Lord Lyons. He wrote concerning it to Lord John Russell, under date of May 23d, as follows: "Upon receiving the intelligence of your Lordship's declaration in Parliament, Mr. Seward drew up a despatch to Mr. Adams to be communicated to your Lordship in terms still stronger than any he had before used. I fear that the President has consented to its being sent, on condition, however, that it is to be left to Mr. Adams's discretion to communicate it or not, as he may think advisable. If sent, it will probably reach London about the same time with this despatch." (*Parliamentary Paper*, 1862, 39.) This despatch reached the Foreign Office June 4th; the despatch referred to in it did not reach the Legation in London until six days later, June 10th. See also *Parliamentary Paper* (1862), 115, where, just at the crisis of the *Trent* affair (December 25, 1861), the attention of Earl Russell is called by Lord Lyons to Mr. Seward's despatch of May 21, then just made public in the printed diplomatic correspondence accompanying the message of the President.

³ *Ms. Diary*, Monday, June 10, 1861.

tic insurrection, contemplated as possible if not immediately impending, a war "between the United States and one, two, or even more European nations," — a conflict of which he now wrote to his wife, "it will be dreadful, but the end will be sure and swift." The despatch was, in fact, a general defiance thrown forth to governments throughout the world, whether avowedly unfriendly or assumed to be so!¹

In this despatch as originally drawn and submitted to the President, the Secretary, reflecting the mood and expectations of the hour, among much else observed that "after long forbearance, designed to soothe discontent and avert the need of civil war, the land and naval forces of the United States have been put in motion to repress the insurrection. The true character of the pretended new State is at once revealed. It is seen to be a Power existing in pronunciamiento only."²

In preparing this puzzling, if not now well-nigh incomprehensible state paper, couched in language plainly calculated to

¹ During the earlier portions of the Lincoln administration, largely through the influence of the Secretary of State, no regular Cabinet meetings were held. Mr. Welles asserts in his *Diary* (I. 138) that "Many of the important measures, particularly of his own Department, [Mr. Seward] managed to dispose of or contrived to have determined independent of the Cabinet." See also *Ib.*, I. 134, 154, 203, 274. So far as anywhere appears, this course was followed with respect to the despatch of May 21. It was never submitted to the Cabinet, and, while rumors of its purport were current, knowledge of its details seems at the time to have been confined to the Secretary, Mr. Lincoln, and Mr. Sumner, Chairman of the Senate Committee on Foreign Relations, who was consulted by the President in regard to it. No reference to what then occurred is found in Pierce's *Life of Sumner*. A year later, however, when a concerted move was made by the Republican Senators to bring about the dismissal of Secretary Seward from the Cabinet, much emphasis was laid upon this despatch, portions of which had been published in the *Diplomatic Correspondence* of the previous year. In his *Diary* Secretary Welles says that during the discussion which took place, December 20, 1862, between the committee of nine Senators and the President and members of his Cabinet, the volume of *Diplomatic Correspondence* was alluded to; "some letters denounced as unwise and impolitic were specified, one of which, a confidential despatch to Mr. Adams, was read. If it was unwise to write, it was certainly injudicious and indiscreet to publish such a document." (*Diary*, I. 198; *Lincoln and Seward*, 76.) The Secretary of State was at this time very generally accused of transmitting despatches of importance to the foreign representatives without previously submitting them to the President. A case in point was developed at this conference, Mr. Lincoln expressing great surprise when his attention was called by Senator Sumner to a certain despatch in the printed *Diplomatic Correspondence* (that to Mr. Adams, July 5, 1862), disclaiming any knowledge of it. Pierce, IV. 111.

² Nicolay and Hay, *Lincoln*, IV. 273.

provoke and precipitate a foreign crisis, one thing only is obvious, — the Secretary of State was, in plain English, discounting a wholly successful outcome of the movements of the land and naval forces of the United States then preparing to be put in immediate "motion to repress the insurrection." So much is manifest. What, however, was implied by the observation in the paragraph immediately succeeding that from which the extract just given is quoted, is less apparent. The Secretary went on to assert that in certain contingencies then regarded as of more than probable occurrence "the laws of nations afford an adequate and proper remedy, and we shall avail ourselves of it." Clearly a threat, what that threat signified is still matter of inference.

Though a lawyer by calling, and as such in a way eminent, Mr. Seward did not possess what is known as a legal mind, much less one of judicial cast. Long retired from active practice, he had never given any particular attention to the problems and collection of usages which make up the body of what is denominated International Law. He now also freely admitted to his Cabinet colleagues that, though almost daily called upon to deal with novel and intricate international issues, he never opened the treatises, and "that he was too old to study." One of his associates (Blair) did not hesitate to say that in his opinion the Secretary of State knew "less of public law than any man who ever held a seat in the Cabinet"; while another (Welles) put on record his surprise to find him "so little acquainted with the books,"¹ and a third (Bates) pronounced him "no lawyer and no statesman."² Sumner, whose own conceptions of international usage were distinctly nebulous, averred that Seward knew nothing of it; and apparently without consulting so familiar an authority as Wheaton, the Secretary of State

¹ Allowance must always be made in case of statements found in the Welles *Diary* as respects Mr. Seward. Referring, however, to his lack of acquaintance with the principles of international law, Mr. Welles wrote as follows, under a date as late as January 30, 1865: "He told me last week that he had looked in no book on international law or admiralty law since he entered on the duties of his present office. His thoughts, he says, come to the same conclusions as the writers and students. This he has said to me more than once. In administering the government he seems to have little idea of constitutional and legal restraints, but acts as if the ruler was omnipotent. Hence he has involved himself in constant difficulties." *Diary*, II. 232.

² Welles, *Diary*, I. 170, 233, 275, 285; II. 93.

depended for his conclusions on the chief clerk of the Department and a few unofficial advisers of questionable authority.¹ What, however, Mr. Seward now distinctly implied, was that, should Great Britain give shelter from our pursuit and punishment to those whom [she declared "lawful belligerents," but who being our citizens we adjudged to be "pirates," the law of nations would justify the United States in pursuing such miscreants into neutral harbors and there destroying them. The proposition was certainly "bold," — not to say startling.²

¹ "[Seward] has, with all his bustle and activity, but little application; relies on Hunter and his clerk, Smith, . . . to sustain him and hunt up his authorities." Welles, *Diary*, I. 275. "Whiting, Solicitor of the War Department, has gone to Europe. Is sent out by Seward, I suppose. . . . [William Whiting is] such a man as Stanton would select and Seward use." *Ib.*, 381, 544; II. 85. William Whiting then occupied the position of solicitor of the War Department. Caleb Cushing, whose loyalty at this time was not above suspicion, also seems to have been an unofficial adviser. *Ib.*, I. 275.

² This would seem to be the unavoidable inference to be drawn from the despatches of Secretary Seward connected with events of subsequent occurrence. On the night of October 6, 1864, the Confederate cruiser *Florida* was run down by the United States cruiser *Wachusett* in the harbor of Bahia, Brazil, and subsequently towed out to sea and carried to Hampton Roads, as prize. In this case there was no controversy as to facts. The whole proceeding was high-handed, and in manifest violation of recognized principles of international law. As such it led to formal representations on behalf of Brazil to which Secretary Seward replied under date of December 20, 1864. The correspondence can be found in the "British Case" prepared for the Geneva Arbitration (75-78) and in Bulloch's *Secret Service of the Confederate States in Europe* (I. 199-224). In his reply to the reclamation of the Brazilian Minister Secretary Seward then wrote that the *Florida*, "like the *Alabama*, was a pirate, belonging to no nation or lawful belligerent, and therefore that the harbouring and supplying of these piratical ships and their crews in Brazilian ports were wrongs and injuries for which Brazil justly owes reparation to the United States." The Secretary further denied that the "insurgents of this country are a lawful naval belligerent; and, on the contrary, it maintains that the ascription of that character by the Government of Brazil to insurgent citizens of the United States, who have hitherto been, and who still are, destitute of naval forces, ports, and courts, is an act of intervention in derogation of the law of nations, and unfriendly and wrongful, as it is manifestly injurious, to the United States."

In the preceding year, in a despatch from Mr. Seward to Mr. Adams (*Diplomatic Correspondence*, 1863, Part I. 309-310) relating to the recent decision in the case of the *Alexandra*, Mr. Seward wrote as follows: "If the law of Great Britain must be left without amendment, and be construed by the government in conformity with the rulings of the chief baron of the exchequer, then there will be left for the United States no alternative but to protect themselves and their commerce against armed cruisers proceeding from British ports, as against the naval forces of a public enemy; and also to claim and insist upon indemnities for the injuries which all such expeditions have hitherto committed or shall hereafter commit against this government and the citizens of the United States. To this

Coming, however, to the final paragraph in the extracts from the despatch of May 21st — that relating to the Treaty of Paris — it will be noted that the Secretary referred to it as “abolishing privateering everywhere in all cases and forever”; he then went on as follows: “You already have our authority to propose to [Great Britain] our accession to that declaration. If she refuse to receive it, it can only be because she is willing to become the patron of privateering when aimed at our devastation.”¹

We now come to the true inwardness of the present discussion. What did Seward mean by this language? What was he driving at? Did he speak in good faith? — or did he have an ulterior and undisclosed end always in view, that end to be attained by indirection? The study becomes interesting, for it is necessarily made from the *dramatis personae* point of view. It involves the correct reading of the individual character of eminent men at a very critical period historically. What then was Seward proposing to himself? What considerations actu-

end this government is now preparing a naval force with the utmost vigor; and if the national navy, which it is rapidly creating, shall not be sufficient for the emergency, then the United States must bring into employment such private armed naval forces as the mercantile marine shall afford. . . . Can it be an occasion for either surprise or complaint that if this condition of things is to remain and receive the deliberate sanction of the British government, the navy of the United States will receive instructions to pursue these enemies into the ports which thus, in violation of the law of nations and the obligations of neutrality, become harbors for the pirates?” In connection with these extracts it should be observed that the first — that relating to the *Florida* — occurred at the close of December, 1864, when the Civil War was rapidly drawing to a close. The correspondence, in this case, was submitted to the Cabinet, and the despatch to the Brazilian minister was approved (Welles, *Diary*, II. 184-186, 197). There is no evidence that the previous despatch to Mr. Adams, of July 11, 1863, was submitted to the Cabinet or had been approved by the President before transmission. It was not communicated by Mr. Adams to Earl Russell; and when it subsequently appeared in the United States *Diplomatic Correspondence*, “a storm was raised in the House of Commons. This was not calmed until Earl Russell claimed that as the despatch had never been laid before him, he had been spared the difficulty and pain of giving an appropriate answer to it.” (Bancroft, *Seward*, II. 390.) While the Secretary naturally hesitated to advance such a claim as an accepted principle of international law, he seems not to have been unwilling vaguely to imply as much, venturing on no specific proposition. The threat of a recourse to privateering in certain contingencies which must inevitably have ensued had the action taken by the *Wachusett* been ventured upon under instructions in British waters, was expressed in language which could not be termed even diplomatically veiled.

¹ Nicolay and Hay, *Lincoln*, IV. 273.

ated Earl Russell in the course he was presently to take? How did Mr. Adams, Lord Lyons and Mr. Dayton, who bore the subordinate parts in the drama, demean themselves?

Seward is primarily to be considered and disposed of. His was the leading part. He had in the first place announced that dealing with the privateers sailing under Confederate letters of marque was a matter within the exclusive prerogative of the United States, the Confederacy then (May 21st) not being a recognized belligerent; and the United States proposed, by virtue of its municipal law, to treat the privateers as pirates. Seward's scheme unquestionably was, by an adroit though somewhat transparent move on the diplomatic chess-board, to force the neutral maritime powers into a position inconsistent with the law, — whether international or of humanity; that is, he proposed by giving notice as prescribed to secure the accession of this country to the stipulations of the Treaty of Paris under which privateering was abolished, and then the United States was, as the sole recognized sovereign nationality, to demand of the Powers that "privateering [being] everywhere and in all cases and forever" abolished, the Powers must refuse access to their ports to the Confederate "pirates," as he designated them. Thus reducing them into the class of criminals or outlaws, — as such to be summarily dealt with.

Such was Seward's scheme, as it first assumed shape in his mind.

Yet, again, the matter of dates now becomes important. Seward took the initial step leading to this position April 24th, — twelve days only after the attack on Sumter. He then notified the proposed accession of the United States to the Declaration of Paris. The Confederacy had not up to that time anywhere been recognized as a belligerent; and, that being the case, Seward assumed that the United States, being the "exclusive sovereign," rightfully and as of course spoke internationally for the so-called Confederacy as well as for itself.

Unfortunately for the practical working of this theory, Great Britain and France, acting in co-operation at this juncture, recognized the Confederacy as a belligerent; and then, under all accepted rules of international law, the new belligerent had a right to carry on its operations on water as on land.

Here was a new and somewhat irritating as well as extremely

perplexing issue; and again Seward took high ground. As foreshadowed in his despatch No. 10, he now insisted that the Confederacy was not a belligerent in any full sense of the term until acknowledged as such by the sovereign power of the United States. Writing to Mr. Dayton at this time Mr. Seward thus expressed himself, in a despatch marked "strictly confidential":

You seem to us to have adopted the idea that the insurgents are necessarily a belligerent power because the British and French Governments have chosen in some of their public papers to say that they are so. . . . Our view is on the contrary. . . . We do not admit, and we shall never admit, even the fundamental statement you assume, namely, that Great Britain and France have recognized the insurgents as a belligerent party. True, you say that they have so declared. We reply: Yes, but they have not declared so to us. You may rejoin: Their public declaration concludes the fact. We nevertheless reply: It must be not their declarations, but their action that shall conclude the fact. That action does not yet appear, and we trust, for the sake of harmony with them and peace throughout the world, that it will not happen.¹

Accordingly, he vaguely claimed that the United States, not acknowledging the Confederacy as a belligerent, could treat as it saw fit vessels commissioned by the Montgomery government as privateers; and, privateers being abolished by the Declaration of Paris, they consequently became pirates. Having thus fixed their status, he further distinctly intimated an intention to claim that they could be pursued into neutral ports, and there destroyed as common enemies of mankind.²

Such was apparently the line of procedure somewhat vaguely formulated in Seward's mind; the ultimate step of which he held in reserve throughout what are known as the negotiations relating to the Declaration of Paris, now gravely entered upon.

¹ Moore, *International Law Digest*, VII. 574.

² In the case of the *Florida* the commander of the *Wachusett* had acted on his own responsibility. His proceeding was therefore disavowed with expressions of regret; and this was to be regarded as "ample reparation" in view of "the enduring sense of injuries" entertained by the United States. Had, however, the violation of neutrality taken place by order under the conditions set forth in the despatch to Mr. Adams of July 11, 1863, the law of nations "afforded an adequate and proper remedy," that remedy being apparently an offer of ample though formal reparation, accompanied, of course, in proper cases, by a suitable money indemnity. See, also, Welles, *Diary*, II. 185, 197.

So much for Secretary Seward. It is now necessary to turn to the other parties to that negotiation; and first, Earl Russell.

In the earliest of the discussions which took place in the Commons (May 2, 1861) after the firing on Sumter, Lord John Russell, as he then was, used the striking expression that Great Britain had nothing to do with the American troubles, and added, "For God's sake, let us, if possible, keep out of them!" As a statement of fact also, and proposition of international usage, Lord John Russell stood on firm ground when he further at this juncture said in the Commons: "a power or a community (call it which you will) which [is] at war with another, and which [covers] the sea with its cruisers, must either be acknowledged as a belligerent, or dealt with as a pirate."¹ The issue was clear and made up. President Lincoln had by proclamation announced that those captured on Confederate cruisers or privateers were to be dealt with as pirates. These utterances of Lord John clearly foreshadowed the position of neutrality the British Government, of which he was in this matter the mouth-piece, proposed to assume. That Government was, however, most distrustful of Secretary Seward personally. Those composing it very generally suspected that he intended to excite some grave foreign complication in order to bring about a domestic reconciliation. With this possibility in mind, Lord John Russell had written to Lord Lyons as long before as February 20th, as follows: "Supposing, however, that Mr. Lincoln, acting under bad advice, should endeavor to provide excitement for the public mind by raising questions with Great Britain, Her Majesty's Government feel no hesitation as to the policy they would pursue. . . . They would take care to let the Government which multiplied provocations and sought for quarrels understand that their forbearance sprung from the consciousness of strength and not from the timidity of weakness."

The British Secretary did not err in this surmise. The idea of a foreign complication as a counter-irritant was, as we now know, distinctly in Seward's mind, even at that early date (February, 1861). Philosophizing on this problem in the measured language characteristic of his writings, Mr. Rhodes says of the Secretary's mental condition four months later:

¹ Walpole, *Twenty-five Years*, II. 41.

The infatuation of Seward is hard to understand; it shows that the notion which had prompted the "Thoughts for the President's Consideration" still lodged in his brain, and that he dreamed that if the United States made war on England because she helped the Confederacy, the Southerners, by some occult emotional change, would sink their animosity to the North, and join with it for the sake of overcoming the traditional enemy. His unconcern at the prospect of serious trouble with England was not courage, but a recklessness which made him oblivious of what all discerning Northern statesmen knew — that the people devoted to the Union had undertaken quite enough, in their endeavor to preserve the nation from destruction by its internal foes.¹

In other words, Seward seems to have shared to the full in the condition of mental intoxication in which the loyal North indulged during the hundred days between Sumter and Bull Run. The distrust of him, therefore, privately entertained at that time in diplomatic circles and the departments of foreign affairs was well founded; far more so than was generally known, or in America even surmised until the Nicolay-Hay revelations of twenty years later. Lord Lyons, however, at once advised Earl Russell of Seward's scheme in the Declaration of Paris move. In a despatch dated June 4th, and received in London June 14th, he wrote:

"It is probable that Mr. Adams may, before this despatch reaches your Lordship, have offered, on the part of this Government, to adhere to Art. 1 of the Declaration of Paris as well as to the others and thus to declare privateering to be abolished. There is no doubt that this adherence will be offered in the expectation that it will bind the Governments accepting it to treat the privateers of the Southern Confederacy as pirates. . . . At the present moment, however, the privateers are in full activity, and have met with considerable success. It is not, therefore, to be expected that the Southern Confederacy will relinquish the employment of them, otherwise than on compulsion or in return for some great concession from France and England." He further added this caution: "It seems to me to be far from certain that the United States Congress would ratify the abolition of privateering; nor do I suppose that the Cabinet will abide by its proposal when it finds that it will gain nothing towards the suppression of the Southern privateering by doing so."

¹ Rhodes, III. 424.

The ultimate purpose of Seward's move on the international chess-board was, therefore, understood in the British Foreign Office; and, of course, Earl Russell did not propose to be unwittingly a victim of it. Accordingly, under date of July 12, 1861, he was thus writing to Edward Everett in Boston, knowing well that the latter was in correspondence with Mr. Adams in London:

"I respect the unanimous feeling of the North, and still more the resolution not to permit the extension of Slavery which led to the election of President Lincoln. But with regard to our own course I must say something more. There were according to your account eight millions of freemen in the Slave States. Of these millions upwards of five have been for some time in open revolt against the President and Congress of the United States. It is not our practice to treat five millions of freemen as pirates, and to hang their sailors if they stop our merchantmen. But unless we meant to treat them as pirates and to hang them, we could not deny them belligerent rights. This is what you and we did in the case of the South American Colonies of Spain. Your own President and Courts of Law decided this question in the case of Venezuela.¹

¹ Adams Mss. Enclosure in *Everett to Adams*, August 20, 1861. *Proceedings*, XLV. 76, 77.

[In view of the correspondence which is known to have passed between the Premier and the Editor of the *Times* just prior to the Trent affair, four months later, it is safe to assume that the *Times* was at this juncture directly inspired from Government sources. In its editorial columns of the issue of May 15th, the following comment appeared on the Proclamation of Belligerency, then just published:

"The North sees in the Southern States rebels against its authority, and will probably, at first at least, decline to recognize the validity of Letters of Marque issued under the authority of President Jefferson Davis. The South will not be slow to retaliate, and it may easily be anticipated that there will be a disposition on both sides to treat those crews of privateers who may fall into their hands as pirates, to whom the license they bear gives no protection. What would be the conduct of the British Government under such circumstances? Suppose an Englishman taken on board a Southern privateer to be hanged under a sentence of a Court of Admiralty at New York, — what would be the conduct of the Government in this country? The answer of the Proclamation to the question is by no means encouraging. Persons enlisting in such service will do so at their peril and of their own wrong, and will in no wise obtain any protection from us against any liabilities or penal consequences. It will be observed that in this place the word 'such' is omitted. The liabilities and penal consequences are not confined to those under the Act or under the law of nations, but are left wide and undefined, as if on purpose to impress the very case we are supposing. . . . We have done our duty if we distinctly point out that those Englishmen who, in defiance of the laws of their country and the solemn warnings of their Sovereign, rush into this execrable conflict will do so with direct notice that if they meet with enemies

Meanwhile, Seward, by what has always, for some reason not at once apparent, passed for a very astute proceeding,¹ caused a transfer of the whole negotiation from Washington to London and Paris, — that is, he refused to see the representatives of France and Great Britain together, and under instructions acting jointly in reference to the accession of the United States to the Declaration of Paris; and by so doing caused the negotiations to pass out of his own hands into those of his two representatives in Europe, Mr. Adams and Mr. Dayton.² They, July 6th, were instructed accordingly, and proceeded to negotiate.

Dates and conditions must again be borne in mind. The instructions to negotiate on the basis of the treaty of Paris “pure and simple,” bore date of July 6th, just fifteen days before the battle of Bull Run, and when the movement which led to that disaster was fully decided upon and in active preparation. So far as foreign relations were concerned, Seward was

as reckless and merciless as themselves, they must bear the fate that awaits them, without any hope that the country whose laws they have broken will stretch forth her arm to shield them from the consequences of their own folly and wickedness. . . . The warning has been given in time; we hope and believe that it will prove effectual, and that the horrors of a civil war between brethren will not be aggravated by the uncalled-for intervention of the subjects of the parent State.”

It would thus appear that from the commencement Great Britain was upon its guard. Under the circumstances, it was not proposed to protect British subjects therein concerned in case privateering was visited with the penalty of piracy. On the other hand, the British Government did not propose, through a deferred adhesion to the Treaty of Paris by the United States, to be drawn into a denial of right of asylum to a recognized belligerent. Ed.]

¹ *Seward at Washington*, II. 581; Bancroft, *Seward*, II. 181.

² “Mr. Seward said at once that he could not receive from us a communication founded on the assumption that the Southern rebels were to be regarded as belligerents; that this was a determination to which the Cabinet had come deliberately; that he could not admit that recent events had in any respect altered the relations between foreign Powers and the Southern States; that he would not discuss the question with us, but that he should give instructions to the United States Ministers in London and Paris, who would be thus enabled to state the reasons for the course taken by their Government to your Lordship and to M. Thouvenel, if you should be desirous to hear them.

“‘That is to say,’ observed M. Mercier, ‘you prefer to treat the question in Paris and London rather than with us here.’

“‘Just so,’ said Mr. Seward; and he proceeded to tell us that he should be very much obliged if we would, on our side, leave with him, for his own use only, our instructions, in order that he might be able to write his despatches to London and Paris with a certainty that he did not misapprehend the views of our Governments.” *Lord Lyons to Lord John Russell*, June 17, 1861.

then still riding a very high horse, — the No. 10 charger, in fact, he had mounted on the 21st of the previous May. We get a vivid and exceedingly life-like glimpse of him, his attitude and way of talking at just this juncture through Russell's Diary. The *Times* special correspondent there describes how on July 4th — while the despatches ordering the Declaration of Paris negotiations to proceed were yet on Mr. Seward's table, to go out two days later — he (Russell) called at the Department of State. He reports the impression in the course of that interview made on him by Seward, recording his language thus:

‘ “We are dealing with an insurrection within our own country, of our own people, and the Government of Great Britain have thought fit to recognize that insurrection before we were able to bring the strength of the Union to bear against it, by conceding to it the status of belligerent. Although we might justly complain of such an unfriendly act in a manner that might injure the friendly relations between the two countries, we do not desire to give any excuse for foreign interference; although we do not hesitate, in case of necessity, to resist it to the uttermost, we have less to fear from a foreign war than any country in the world. If any European Power provokes a war, we shall not shrink from it. A contest between Great Britain and the United States would wrap the world in fire, and at the end it would not be the United States which would have to lament the results of the conflict.”

I could not but admire the confidence — may I say the coolness? — of the statesman who sat in his modest little room within the sound of the enemy's guns, in a capital menaced by their forces who spoke so fearlessly of war with a Power which could have blotted out the paper blockade of the Southern ports and coast in a few hours, and, in conjunction with the Southern armies, have repeated the occupation and destruction of the capital.

To the historical investigator of 1912 the foregoing account of a familiar talk with Secretary Seward in July, 1861, just a fortnight before the disaster at Bull Run, is distinctly suggestive; as also is Russell's comment on what then passed. To us who, seeing before and after, look back on the situation at that period, it is curious to consider what possibilities were in the mind of Secretary Seward when he thus, speaking for the United States, calmly contemplated the contingency of a war

with the two leading naval powers of Europe, imposed upon the somewhat gigantic task of suppressing a domestic insurrection in which eleven distinct political communities were concerned, representing eight millions of population. We now know, and it would seem as if Secretary Seward could at the time hardly have failed to realize, that the task of suppressing the insurrection alone taxed to the utmost both the strength and the spirit of persistence of that portion of the United States which remained loyal to the Union. We also now appreciate the strategic fact that every vital military operation involved in that gigantic effort depended on maritime control.¹ From the capture of New Orleans by Farragut, through Sherman's march to the sea to Lee's surrender at Appomattox, it may with safety be asserted that, with the exception of the Vicksburg and Chattanooga operations, there was not one even considerable operation which would have been possible had the national government been unable to sustain itself as the dominant sea power. This, as respects the domestic situation. And yet in July, 1861, Secretary Seward did not hesitate to profess his implicit confidence in the ability of the national government both to overcome the Confederacy and successfully to meet any possible combination of European nations, or, as he himself put it, to "suppress rebellion and defeat invasion besides."² What then had he in mind when so frequently indulging in the metaphorical prediction that "a contest between Great Britain and the United States would wrap the world in fire"? This prediction, too, he now uttered when actively negotiating for the accession of the United States to what was known as the Declaration of Paris, by which "privateering is and remains abolished."

I am not aware that Secretary Seward ever, either in his correspondence or in any conversation of which we have a record, enlarged upon this subject in detail. In the course of a despatch to Mr. Adams, written on the morrow of Bull Run, he thus expressed himself: "If, through error, on whatever side, this civil contention shall transcend the national bounds and involve foreign States, the energies of all commercial nations, including our own, will necessarily be turned to war, and a general carnival of the adventurous and the reckless of all

¹ *2 Proceedings*, XIX. 311-326.

² Barnes, *Thurlow Weed*, II. 410.

countries, at the cost of the existing commerce of the world, must ensue."¹ This is suggestive; but a more detailed and

¹ To trace conjecturally the line of thought or reasoning pursued by Seward in the presence of the quite unforeseeable phases assumed by the course of events at this juncture has a distinct psychological interest, and is, moreover, essential to any correct understanding of his acts and utterances. Essentially an imaginative man, Seward had also, as Bancroft points out (II. 505), a strong emotional and sentimental side to his character. To this was largely due his unbounded faith in the spirit of nationality in the American people, and his impulse to an appeal to patriotism in presence of a domestic complication. This faith was in him unbounded, and found frequent and at times eloquent expression. It inspired, we know, the fine closing sentiment of Lincoln's first inaugural, with its poetic reference to the "mystic chords of memory" swelling the "chorus of the Union." Nicolay-Hay, III. 323, 343. Later it caused Seward to write exhortingly to Mr. Sumner in the midst of a most acute crisis in our foreign relations: "Rouse the nationality of the American people. It is an instinct upon which you can always rely, even when the conscience that ought never to slumber is drugged to death." A passage of similar tenor is quoted by Bancroft (II. 183) from a despatch to Dayton: "Down deep in the heart of the American people — deeper than the love of trade, or of freedom — deeper than the attachment to any local or sectional interest, or partisan pride or individual ambition — deeper than any other sentiment — is that one out of which the Constitution of this Union arose — namely, American Independence — independence of all foreign control, alliance, or influence." With this faith in the possibility of an appeal to what he considered an irresistible power when aroused, Seward's memory insensibly went back to the traditions of the War of 1812, and his own impressions based on features of that struggle and recollection of its phases and incidents; for, born in May, 1801, Seward was at the impressionable age of fourteen when the war closed. The part then played by the American privateers is familiar history. Reverting to that national experience, Seward, like President Buchanan, appears to have reasoned somewhat as follows:

(1) "Our most effectual means of annoying a great naval power upon the ocean is by granting letters of marque and reprisal." (*Supra*, 8.)

(2) In certain emergencies, he declared, "we must let loose our privateers." (Welles, *Diary*, I. 437.)

(3) Finding their way to every sea, these privateers will "wrap the whole world in flames. No power so remote that she will not feel the fire of our battle and be burned by our conflagration." (Russell, *My Diary*, December 16, 1861.)

(4) Consequently, any struggle in which we may be involved will be "dreadful, but the end will be sure and swift." (*Seward at Washington*, II. 575.)

In pursuing some such line of reasoning, and in reaching this conclusion, Seward, as is now obvious, left out of consideration the vital fact that since 1815 steam had replaced canvas in naval operations. Jefferson Davis at the same time, but on the other side, made the same mistake. Sustained privateering was, therefore, possible in 1861 only for vessels propelled by steam. This the Confederacy early learned. So far as appears, it does not seem to have occurred to Secretary Seward that in case of hostilities with the leading nations of Europe practically every foreign port in the world would have been closed to American vessels. It would have been impossible for them to hold the sea. The blockade of the Confederacy would have been raised, and the loyal States would have been in turn blockaded. Under these circumstances, the American privateer, could it

fairly adequate idea of what was then in Seward's mind can perhaps be derived from the *Diary* of Mr. Welles, who himself seems to have participated to a somewhat inexplicable extent in the highly conflagratory confidence of his colleague. Secretary Welles certainly did not as a habit share the views of Mr. Seward; but none the less, writing at a period two years later and even more critical, he on this "wrap-the-world-in-fire" topic thus expressed himself:

A war with England would be a serious calamity to us, but scarcely less serious to her. She cannot afford a maritime conflict with us, even in our troubles, nor will she. We can live within ourselves if worse comes to worse. Our territory is compact, facing both oceans, and in latitudes which furnish us in abundance without foreign aid all the necessaries and most of the luxuries of life; but England has a colonial system which was once her strength, but is her weakness in these days and with such a people as our countrymen to contend with. Her colonies are scattered over the globe. We could, with our public and private armed ships, interrupt and destroy her communication with her dependencies, her colonies, on which she is as dependent for prosperity as they on her. I was therefore in favor of meeting her face to face, asking only what is right but submitting to nothing that is wrong.

If the late despatches are to be taken as the policy she intends to pursue, it means war, and if war is to come it looks to me as of a magnitude greater than the world has ever experienced, — as if it

have kept the sea, would have had no port of a foreign country in which to get supplies or into which to send its prizes; and the ports of its own country, where machinery could have been repaired and coal obtained, would have been closed. Hence every inducement as well as facility for privateering would have ceased to exist. The ports of the Confederacy would meanwhile have been opened, with a consequent unobstructed movement of cotton to Europe, and a counter unobstructed movement of arms, munitions and stores to the Confederacy.

Under such circumstances, it would seem as if Secretary Seward indulged in a delusion no less deceptive and dangerous than that at the same time indulged in by Jefferson Davis over the potency of cotton as a finally controlling factor in modern politics as well as trade. The maintenance of the blockade of the Confederacy, in fact, was essential to the success of the national government; and, whatever else might have resulted from a foreign intervention, had it occurred during the Civil War, the United States would have lost its control of the sea and the blockade of the Confederacy would have been raised. It is difficult now to see how in such case the cause of the Union could have been sustained. If his reasoning was really that indicated by his utterances, official and familiar, and they were not for mere effect, Mr. Seward would on this subject seem to have been wrong in his every premise. He left out of his equation not only steam and electricity but a half century of scientific development.

would eventuate in the upheaval of nations, the overthrow of governments and dynasties. The sympathies of the mass of mankind would be with us rather than with the decaying dynasties and the old effete governments. Not unlikely the conflict thus commenced would kindle the torch of civil war throughout Christendom, and even nations beyond.¹

The condition of affairs opens a vast field. Should a commercial war commence, it will affect the whole world. The police of the seas will be broken up, and the peaceful intercourse of nations destroyed. Those governments and peoples that have encouraged and are fostering our dissensions will themselves reap the bitter fruits of their malicious intrigues. In this great conflict, thus wickedly begun there will be likely to ensue an uprising of the nations that will shatter existing governments and overthrow the aristocracies and dynasties not only of England but of Europe.²

Two men, mentally so differently constituted, thus concurred in what, involving as it did the mastery of the sea, cannot but impress the modern investigator as a singularly visionary and delusive hallucination. Nevertheless, it would seem that W. H. Russell was right when, on another occasion, he debated in his own mind whether Secretary Seward believed in the somewhat "tall" talk in which on this subject he was apt to indulge. After meditating the proposition carefully, Russell concluded that the Secretary really did have faith in the views he expressed.³ Under the circumstances, it is difficult to avoid

¹ *Diary*, I. 258-259.

² *Diary*, I. 251. The following passage from a speech delivered in the House of Representatives by Thaddeus Stevens, of Pennsylvania, December 30, 1861, is of a similar tenor. Mr. Stevens was chairman of the Committee of Ways and Means, and the entire speech is curiously suggestive of the rhodomontade very generally indulged in at that stage of the conflict:

"War is always a mighty evil. With England it would be especially deplorable. But war with all nations is better than national dishonour and disgrace. We should be better able to meet England in arms with the rebel States in alliance with her than if they were still loyal. They have a vastly extended defenceless frontier easily accessible by a maritime enemy. Most of the army and navy of the nation during the last war were required for its defence. If we were relieved from protecting them, we could use all our forces in other quarters. We should then do what we ought long since to have done — organize their domestic enemies against them, who would find themselves and their allies sufficient employment at home without invading the North. If such a deplorable war should be forced upon us we should do what we ought to have done in the last war — rectify our Eastern and Northern boundaries; and our banner would wave over freemen, and none but republican freemen, from the Gulf of Mexico to the Arctic Ocean, and from the Bay of St. Lawrence to Puget Sound."

³ *My Diary*, April 4, 1861.

the conclusion reached by Secretary Welles in other connections, that Secretary Seward was in his mental make-up essentially visionary and erratic.¹ He was also, as Mr. Sumner asserted, somewhat wanting in what is known as hard, common sense.² Nevertheless, these characteristics again must be taken with qualifications. While Seward was visionary and to an exceptional and unfortunate degree addicted to prophetic utterance, yet, as a saving grace, he rarely allowed his visions to commit him to any action involving irretrievable disaster; while, as respects his erratic tendencies, when boldly challenged he became, as Mr. Welles asserted, "timid, uncertain, and distrustful";³ and, "while thus lacking in a dangerous tenacity of purpose, he was naturally disposed to oblique and indirect movements. With an almost phenomenal quickness of apprehension, however, he possessed "wonderful facility and aptness in adapting himself to circumstances and exigencies which he could not control, and a fertility in expedients, with a dexterity in adopting or dismissing plans and projected schemes, unsurpassed."⁴ Very similar conclusions in these respects were reached by Mr. Bancroft, when he wrote in his *Life*: "There was in Seward's nature so much that was emotional and sentimental aside from what was subtle, and it was so common for him to seek to accomplish his purpose by indirect means, that it is often impossible to distinguish impulse from calculation."⁵

Reverting now to the narrative, it is well to bear in mind that, at the very hour Russell's description of the call at the State Department was recorded, the crisis was impending; seventeen days later only "the strength of the Union" was to be brought to bear against the Confederacy, with results which would render it difficult to deny the latter the status of a bel-ligerent. Our somewhat hastily improvised and extremely vain-glorious martial array was to be chased back to Washington in panic flight by "the power existing in pronunciamiento only."

So much for the situation as, in the period of this episode, it affected Seward's mental operations and plans of procedure. There can, I think, be no reasonable doubt of the program he had in mind up to Bull Run; but, five months later, that program and the sequence of events were clearly set forth by

¹ Welles, *Diary*, I. II, 275.

² *Ib.*, 285.

³ *Ib.*, 153, 154.

⁴ Welles, *Lincoln and Seward*, 43.

⁵ Bancroft, II. 505.

Lyons in a despatch to Earl Russell, dated December 6, 1861, and received in London December 25th, at the very crisis of the subsequent *Trent* affair. Lyons wrote:

A great deal of the space [in the diplomatic correspondence accompanying the President's message that day published] devoted to [England and France] is occupied by the negotiations concerning the adherence of the United States to the Declaration of Paris. Mr. Adams writes frequently and at great length concerning his misapprehension of your Lordship's intentions as to transferring the negotiation to Washington. The simple explanation of this misapprehension is, that Mr. Seward refused to see the despatch in which your Lordship's proposals were made. Your Lordship will recollect that Mr. Seward, having been permitted by M. Mercier and me to read and consider in private that despatch, and a despatch of a similar tenor from the Government of France, refused to receive the formal copies we were instructed to place in his hands, or to take any official notice of their contents. . . . From several of the papers now published, it appears that it was only an act of common prudence, on the part of the Governments of Great Britain and France, not to accept the accession of this country to the Declaration of Paris, without stating distinctly what obligations they intended by doing so to assume with regard to the Seceded States. Little doubt can remain, after reading the papers, that the accession was offered solely with a view to the effect it would have on the privateering operations of the Southern States; and that a refusal on the part of England and France, after having accepted the accession, to treat the Southern privateers as pirates, would have been made a serious grievance, if not a ground of quarrel. . . . In the letter from Mr. Seward to Mr. Dayton of the 22d June, the following passage occurs: "We shall continue to regard France as respecting our Government until she practically acts in violation of her friendly obligations to us, as we understand them. When she does that, it will be time enough to inquire whether if we accede to the Treaty of Paris she could, after that, allow pirates upon our commerce shelter in her ports, and what our remedy should then be. We have no fear on this head."

Had, therefore, the movement to Bull Run resulted differently, as Mr. Seward confidently believed it would, he had it in mind then to assume an aggressive attitude, boldly disclosing his ultimate object. He would insist on United States sovereignty, and the outlawing of all Confederate cruisers as pirates under the laws of the United States become operative

as respects them by virtue of the adhesion of that country to the Declaration of Paris.

But, weeks before the 21st of July, and its catastrophe, the Declaration of Paris negotiation had passed out of Seward's hands into the hands of Messrs. Adams and Dayton. Their personalities and views of the situation have next to be considered.

Mr. Adams seems to have approached the negotiation in perfect good faith, holding that the articles of the Declaration of Paris were right in themselves, constituting a distinct advance in international law; and, being right, they should be acceded to by the United States on their merits and in good faith. He did not contemplate an ulterior move; had no eye to possible impending complications; nor did he apparently grasp Seward's scheme in all its consequences. He, therefore, proceeded in a straightforward way to negotiate the accession of the United States to the Paris Declaration. In so doing he acted as it was incumbent on a diplomatic agent to act. He carried out his instructions in a spirit of obedience, and with unquestioning loyalty to his chief.

Mr. Dayton otherwise viewed the thing proposed. He apprehended early trouble between the United States and Great Britain, and considered that in such contingency privateering was a weapon of aggressive warfare which the United States should on no account abandon. He was, therefore, most reluctant to carry out his instructions, and did so only when they reached him in positive and explicit terms.

What policy and scheme of subsequent, alternative action were in Secretary Seward's mind when he forwarded those instructions, looking to the adherence of the United States to the Articles of the Declaration of Paris "pure and simple" can only now be matter of surmise. One thing would seem apparent. Secretary Seward at this juncture looked forward to serious foreign complications as at least probable. Neither in case of such complications does he seem to have proposed in any event so to commit the United States that in case of emergency a recourse could not be had to privateering as an effective weapon in warfare, especially in the case of Great Britain. On the contrary, both in his own utterances and in the *Diary* records of Secretary Welles a resort to letters of marque in

the event of a foreign complication when the world would be "wrapped in fire" seems to be assumed as a matter of course.¹

In the absence of any direct avowal, which could, under the circumstances, hardly be looked for, the inevitable inference, therefore, is that in such eventuality the American Secretary of State, with his "wonderful facility and aptness in adapting himself to circumstances and exigencies which he could not control," and his "fertility in expedients, combined with dexterity in adopting or dismissing plans and projected schemes,"² proposed to extricate himself from a commitment then become undesirable by asserting that through their refusal to recognize the cruisers of the Confederacy as pirates the foreign powers had themselves disregarded the Declaration of Paris with respect to privateering, thus releasing the United States from its obligations.

Through such confusion of thought and juggling of phrases the Secretary of State apparently saw a path clear before him in any eventuality. The United States was to find itself free to a recourse to what in the absence of the Declaration of Paris had always been regarded as a legitimate method of warfare. As usual, the onus of the violated obligation would have been transferred to the other parties thereto.

The British representative at Washington, Lord Lyons, was the only *dramatis persona* in these negotiations remaining to be considered. Of him it may fairly be said that his course throughout seems to furnish no ground for criticism. Placed in a most difficult position, and apparently at times treated by Mr. Seward with scant personal and official courtesy, he bore himself with quiet dignity, preserving an even temper and performing admirably his duties. His reports and despatches have not as yet been made accessible in full; but, so far as appears, acting loyally to his chief and paying obedience, both strict and tactful, to his instructions, he kept the British Foreign Office accurately and fully informed as to the course of events. Moreover, he seems to have understood his opponent, correctly divining his plan of operations and ulterior purpose. That he distrusted

¹ A most annoying and destructive weapon of warfare, the "wolves of the sea" were bitterly denounced by the American Secretary of the Navy at the very time when, in case of a conflict with Great Britain, recourse would, he declared, be had to "letters of marque and every means in our power." *Diary*, I. 250.

² Welles, *Lincoln and Seward*, 43.

Mr. Seward and considered him very capable of covert dealing was well understood in Washington. This was the case to such a degree that Mr. Sumner told Secretary Welles that the British Minister had given him to understand that he was "cautious and careful in all his transactions" with the Secretary, and that he "made it a point to reduce all matters with Seward of a public nature to writing."¹ Nevertheless, owing doubtless to his tact, good temper, and the confidence in himself Lord Lyons had inspired, Mr. Welles later on recorded the following belief: "To a mortifying extent Lord Lyons shapes and directs, through the Secretary of State, an erroneous policy to this government. This is humiliating, but true."²

That, in the case of Mr. Seward, the judgment of Gideon Welles was biased and almost invariably harsh and unfavorable, is apparent. He is a prejudiced witness. None the less, a shrewd and incisive judge of character, and a very honest man, the Secretary of the Navy saw things in Lincoln's cabinet from the inside, — his sources of information were the best and most direct. That he was misinformed as to foreign affairs and not infrequently mistaken as well as rash in his judgments concerning them, is apparent from his contemporaneous records; and yet, making all possible allowance on these heads, it is not easy to see how a higher official tribute than that here paid by him could well have been paid to the Minister of a foreign country during a most critical period.

Perhaps, however, the best résumé of the situation in June, 1861, so far as Lord Lyons was concerned, is to be found in W. H. Russell's *Diary*. He there (chapter XLIV) records the fact that returning from his trip through the Confederacy, and reaching Washington on the 3d of July, he found Lord Lyons at the British Legation, and was sorry to observe that he looked "rather careworn and pale." As a result of what he then learned he further stated that Mr. Seward, as the Southern Confederacy developed its power, assumed ever higher ground, and became more exacting and defiant. He went on as follows, referring to what had recently taken place:

Mr. Seward has been fretful, irritable, and acrimonious; and it is not too much to suppose Mr. Sumner has been useful in allaying

¹ Welles, *Diary*, I. 288.

² *Diary*, I. 399, 409.

irritation. A certain despatch was written last June, which amounted to little less than a declaration of war against Great Britain. Most fortunately the President was induced to exercise his power. The despatch was modified though not without opposition, and was forwarded to the English Minister with its teeth drawn. Lord Lyons, who is one of the suavest and quietest of diplomatists, has found it difficult, I fear, to maintain personal relations with Mr. Seward at times. Two despatches have been prepared for Lord John Russell, which could have had no result but to lead to a breach of the peace, had not some friendly interpositor succeeded in averting the wrath of the Foreign Minister.¹

So far as the second, third and fourth articles of the Declaration of Paris were concerned, they in the negotiation now carried on presented no difficulty. The question turned wholly on the first, — that is, “Privateering is and remains abolished.” As respects this, the battle of Bull Run entirely changed the diplomatic situation. After July 21, 1861, it was practically out of the question to deny that the Confederates were belligerents, and, on land or sea, to be treated as such. Nevertheless, the attempted confusion of Confederate cruisers duly commissioned, with privateers sailing under letter of marque, and these with piracy, was pressed until the following October. Then at last those captured on one of the Confederate commerce-destroyers were brought to trial, and a member of the crew of the *Jeff Davis* was convicted and sentenced to death.² Of course the sentence was not executed; and the farce, prolonged, as such since July 21, then came to a close; and with it one of Seward’s most involved diplomatic schemes.

The United States simply had to back down; or, as Seward the day following the battle wrote to his wife, — “nothing remains but to reorganize and begin again.”³

The European negotiations had, however, already languished to a conclusion, all the diplomatic formalities being duly observed. Before the tidings of the catastrophe of July 21 reached Europe, the negotiation had come to a head. A formal convention was concluded (July 18) for the adhesion of the United States to the Declaration of Paris, and awaited signature; but on July 31st Earl Russell, just as the news of what had occurred

¹ Russell, *Diary*, 377.

² *Seward at Washington*, II. 600.

³ Rhodes, III. 429; Nicolay and Hay, V. 10. †

at Bull Run was about to reach London, took occasion to notify Mr. Adams that, if the proposed convention should be signed, the engagement on the part of Great Britain would be "prospective," and would "not invalidate anything already done." In transmitting the correspondence to Secretary Seward, Mr. Adams somewhat naïvely observed that he did not understand the meaning of this phrase. In other words, it would appear that the ingenious confusion of terms — belligerency, sovereignty, insurgency, Confederate cruisers, letters of marque, privateering, pirates and piracy, the last five being in the plan of Mr. Seward interchangeable — the significance, I say, of this confusion of terms had not occurred to the American negotiator. It was, however, very present in the minds of both the British Foreign Secretary and the American Secretary of State. But at just this juncture, and while Mr. Adams was meditating the problem, tidings reached him of what had occurred in front of Washington on the 21st of the previous month. This was on August 4th; and the American negotiator had good occasion to write in his diary, "Thus a change is made in all our expectations, and the war from this time assumes a new character. My own emotion is not to be described."

Applying to Secretary Seward for further instructions, Mr. Adams was presently advised that the word "prospective" in Earl Russell's enigmatic statement was considered "unimportant"; but the declaration that the signature of the convention should "not invalidate anything already done" was suggestive of difficulties. Would Earl Russell kindly specify? This despatch did not reach Mr. Adams until after August 28th, — twenty-four days after the news of Bull Run had got to London, establishing the fact of Confederate belligerency beyond peradventure. Mr. Adams had then as the result of further correspondence already received a despatch from Earl Russell, prepared evidently in the full light of the recent military occurrence which had worked a change so material in all the American minister's "expectations." This despatch was conclusive. So far as "specification" was concerned, it certainly left nothing to inference. Earl Russell now wrote:

— It was most desirable in framing a new agreement not to give rise to a fresh dispute.

But the different attitude of Great Britain and of the United

States in regard to the internal dissensions now unhappily prevailing in the United States gave warning that such a dispute might arise out of the proposed convention.

Her Majesty's Government, upon receiving intelligence that the President had declared by proclamation his intention to blockade the ports of nine of the States of the Union, and that Mr. Davis, speaking in the name of those nine States, had declared his intention to issue letters of marque and reprisals, and having also received certain information of the design of both sides to arm, had come to the conclusion that civil war existed in America, and Her Majesty had thereupon proclaimed her neutrality in the approaching contest.

The Government of the United States, on the other hand, spoke only of unlawful combinations, and designated those concerned in them as rebels and pirates. It would follow logically and consistently, from the attitude taken by Her Majesty's Government, that the so-called Confederate States, being acknowledged as a belligerent, might, by the law of nations, arm privateers, and that their privateers must be regarded as the armed vessels of a belligerent.

With equal logic and consistency it would follow, from the position taken by the United States, that the privateers of the Southern States might be decreed to be pirates, and it might be further argued by the Government of the United States that a European power signing a convention with the United States, declaring that privateering was and remains abolished, would be bound to treat the privateers of the so-called Confederate States as pirates.

Hence, instead of an agreement, charges of bad faith and violation of a convention might be brought in the United States against the power signing such a convention, and treating the privateers of the so-called Confederate States as those of a belligerent power.

{ Not unnaturally, in view of the facts which have here been recounted, and the inferences almost necessarily to be drawn from them, Secretary Seward in due time (September 7th) pronounced the proposed reservation quite "inadmissible." And here the curtain finally fell on this somewhat prolonged and not altogether creditable diplomatic farce.¹

What, however, now seems more particularly to deserve attention in a study of this episode is the extreme danger appar-

¹ [In his annual message to Congress in December, 1861, President Lincoln said: "Although we have failed to induce some of the commercial powers to adopt a desirable melioration of the rigor of maritime war, we have removed all obstructions from the way of this humane reform except such as are merely of temporary and accidental occurrence." Ed.]

ently incurred therein by the United States. Indeed, without its being realized by any one, the country then seems to have practically challenged a greater peril than ever confronted it, with a single exception, through the succeeding years. All, in fact, depended upon the good faith of Earl Russell in pursuance of his policy of neutrality. Earl Russell, by great good luck, chanced to be a conventional British statesman; but had he been a man more of the Bismarckian type, and seen the situation clearly, the result would, if Mr. Henry Adams's view of the situation is correct, have been inevitable. He, in his paper, assumes, and undertakes to show, that Earl Russell throughout this episode acted evasively, practically in bad faith, and with an ulterior and concealed end always in view. That end was the early recognition of the Confederacy, and a consequent division of the United States. From the outset, as Mr. Henry Adams asserts, Earl Russell wanted to put the American Minister in the position of representing a portion only of a divided country, and there hold him.

But if this assumption is correct, the whole game was, in the negotiation which has been described, thrown by Secretary Seward into Earl Russell's hands. All the latter had to do was at once to accede to the proposal of the United States, and admit it by convention to the Articles of the Declaration of Paris. He would then have left the Secretary of State to get the assent of the Senate to that convention; which, however, Lord Lyons had already advised would, under the circumstances, be very difficult to obtain. This, however, a Bismarckian diplomat, if Mr. Henry Adams's theory as to the attitude of Russell and the British ministry is correct, would not have regarded. It would, in fact, in no way have concerned him. He would simply have acknowledged the right to accede, and claimed that, so far as the United States was concerned, "Privateering was and would remain abolished" thereby.

The next inevitable step would have followed, and that soon. Seward, as Secretary of State, would have insisted that the United States spoke for the Confederacy, and, the Confederacy not being a belligerent recognized by the United States, the letters of marque issued by it constituted a license for piracy under the American law; and the American law on that point must be held to prevail. The cruisers of the unrec-

ognized *de facto* government had consequently no status on the ocean. They were not even privateers within the purview of the Declaration of Paris. They were simply pseudo-commissioned corsairs. A year later he angrily referred to them as "piratical cruisers," the presence of which on the ocean seemed "to leave to the United States at most no hope of remaining at peace with Great Britain without sacrifices for which no peace could ever compensate."¹ And again seventeen months later, under date of December 8, 1862, he said that up to a time shortly before, there was "a prevailing consciousness on our part that we were not yet fully prepared for a foreign war. This latter conviction is passing away. It is now apparent to observing and considerate men that no European state is as really capable to do us harm as we are capable to defend ourselves. . . . The whole case may be summed up in this: The United States claim, and they must continually claim, that in this war they are a whole sovereign nation, and entitled to the same respect as such that they accord to Great Britain. Great Britain does not treat them as such a sovereign, and hence all the evils that disturb their intercourse and endanger their friendship."²

Assuming this attitude a year earlier, — and it apparently was Seward's next projected move on the diplomatic chess-board, as the pieces stood thereon after the firing on Sumter and before the Bull Run catastrophe, — the plain opportunity would then have presented itself to the Bismarckian statesman having the program in view which Mr. Henry Adams attributes to Earl Russell. The reply would have been an immediate and emphatic, "Very well; all that being so, we will now recognize the Confederacy as a member of the family of nations. After that, there can be no question whatever as to public commerce-destroyers, privateers or pirates. Every vessel sailing under its flag will be as much a public ship of war as one sailing under the flag of the United States. But, so far as the United States is concerned, 'Privateering is, and remains, abolished!'"

¹ Geneva Award Record, *Correspondence concerning Claims against Great Britain*, October 20, 1862, I. 260.

² Geneva Award Record, *Correspondence concerning Claims against Great Britain*, October 20, 1862, I. 261.

Seward would, by his course, have thus brought about the very result the United States had greatest cause to apprehend and most desired to avoid. In other words, he would have fallen headlong into the somewhat obviously yawning pit he had elaborately designed for others.

How perilously near the country came to the verge of that pit is made apparent in Mr. Bancroft's account of what was known as the Consul Bunch incident,¹ which occurred contemporaneously. Into the details of this incident it is not necessary here to enter. It is sufficient to say that while the negotiation for the adhesion of the United States to the Declaration of Paris was in progress in Europe, Robert Bunch, British Consul at Charleston, was carrying on something bearing a strong resemblance to a diplomatic intrigue looking to a partial adhesion at least of the Confederate Government to the same Declaration. The fact came to the knowledge of Secretary Seward, and the papers and despatches of Consul Bunch were at the proper time intercepted. Subsequently they were forwarded, through Mr. Adams, to the British Foreign Office. From these papers it appeared that Mr. William Henry Trescot of South Carolina, who had previously been in the diplomatic service of the United States, was now serving as an intermediary between Consul Bunch, acting on an intimation from Lord Lyons, and Jefferson Davis, looking to an understanding to be effected with the Confederacy.

A new and extremely interesting *dramatis persona* here enters on the scene; the strong individuality of Mr. Davis must now be taken into account. Mr. Trescot met Davis at Gordonsville, Virginia, while the latter, naturally elated over the victory just won, was on his way back to Richmond fresh from the Bull Run battle-field. Mr. Bancroft then says that a certain dissatisfaction at the way in which the negotiation now proposed to him had been opened seemed to cloud Davis's perception of the possible advantage to be derived from it. Instead, therefore, of at once acceding to the suggestion, and thereby establishing quasi relations with the governments of England and France, Davis merely gave to the proposition a general approval, promising to refer the question to the Confederate Congress. This he subsequently did; and the Congress, in August, 1861,

¹ *Seward*, II. 195-203.

passed a series of resolutions, drafted, it is said, by Davis himself,¹ approving all the Articles of the Declaration of Paris except that referring to privateers. The right of privateering was, however, especially emphasized, and reserved.²

This seems to be a somewhat inadequate disposal of what was in reality a crucial matter.³ It would really almost seem as if a special Providence was then safeguarding the American Union equally against the blunders of its friends and the machinations of its enemies. The fact is that Jefferson Davis was at just this juncture obsessed with three accepted convictions, each one of which in the close proved erroneous; but the three together dictated his policy. These convictions were: (1) that the decisive military success just won at Manassas was final as respects the establishment of the Confederacy as an independent nationality; (2) that the control of cotton as a commercial staple put it in the power of the Confederacy to dictate a foreign policy to the European powers; and (3) that the free issuance of letters of marque to privateers was a terribly destructive weapon of warfare in the hands of the insurgent States. On these factors in the situation he now implicitly relied; and time was yet to show him that, combined, they were but a broken reed. Davis was, however, an essentially self-centred and, in his way, an opinionated man. Implicitly believing he now saw his way clearly, he acted accordingly; and what, differently handled, might have proved a great opportunity for the Confederacy, wholly escaped, unseen and neglected. †

¹ Nicolay and Hay, iv. 279.

² [*Journal of the Congress of the Confederate States of America*, I. 341. These resolutions were substituted, and apparently somewhat hastily, for others which had recently been adopted by the Congress. The *Journal* shows that on July 30 Mr. Hunter of Virginia introduced a preamble and resolutions defining the position of the Confederate States on points of maritime law, as laid down by the Congress of Paris of 1856, which were referred to the Committee on Foreign Affairs. On August 2 Mr. Rhett reported them back to the House, with a recommendation that they pass. Six days after, on motion of Mr. Barnwell, the special order was postponed to consider those resolutions, and the House passed them. On the 9th Mr. Memminger, by unanimous consent, moved to reconsider the vote. and the resolutions were laid on the table. August 13 Hunter submitted a new set of resolutions as a substitute for those on the table, and the House acted at once. The earlier resolutions were not printed in the *Journal*. Ed.]

³ See also Nicolay and Hay, iv. 278-280, where the whole Declaration of Paris negotiation, including the Bunch incident, receives in my judgment a treatment both inadequate and mistaken. When that work was prepared, the facts of the situation had been but imperfectly disclosed.

For, in the full light of subsequent developments and disclosures, it is not difficult to see how a somewhat less self-confident and provincial President of the Confederacy, and a somewhat more astute and clear-sighted British Secretary of Foreign Affairs, would, under conditions then existing, have availed themselves of this opportunity to bring about the result which Mr. Henry Adams asserts Earl Russell from the beginning had in view. But for the good faith of Earl Russell in following out his policy of strict neutrality, and the apparent overconfidence indulged in by Davis in consequence of the recent Confederate success at Bull Run,¹ the way lay open to a direct and full recognition of the Confederacy. The inchoate negotiation initiated by Consul Bunch was by him regarded as the first step in that direction; and, as Mr. Trescot pointed out to Davis, if Mr. Seward's loudly proclaimed threat was carried out, that such recognition would be regarded by the United States as a *casus belli*, Great Britain and France must, as a succeeding and final step, be brought into the struggle as allies of the Confederacy. As a result thereof the world might, as Mr. Seward confidently anticipated, "be wrapped in fire"; but the blockade would surely be raised! Jefferson Davis was yet to learn that, with the blockade in force, no port for prizes was open, and privateering was, consequently, *pro hac vice*, an antiquated and useless weapon in the armory of warfare. If then it were abandoned by the Confederacy as the price of such an alliance as that now suggested, the Confederate British-constructed cruiser would, with its prizes, have free ingress to and egress from the ports not only of the Confederacy but of Great Britain and France. However this might or might not have proved the case, one thing is apparent: If the motive and policy of the Palmerston-Russell Government was in the Summer of 1861 what Mr. Henry Adams so confidently asserts, no better opportunity of reaching the end it had in view ever presented itself than was presented in the course of the proceedings which have just been described.

¹ "There grew up [after the Battle of Bull Run] all over the South such a perfect confidence in its strength and its perfect ability to work its own salvation that very little care was felt for the action of Europe. In fact, the people were just now quite willing to wait for recognition of their independence by European powers, until it was already achieved." De Leon, *Four Years in Rebel Capitals*, 130.

Fortunately for the United States, the policy at this juncture pursued by Earl Russell was far more straightforward, above-board and direct than at the time he had credit for, especially in America, or than the American Minister in London then, or Mr. Henry Adams since, has credited to him.¹ In other words, so far as the record shows, Earl Russell, at that time at least, meant what he said, and carried himself accordingly. Mr. Henry Adams, on the contrary, writing so lately as 1907, has expressed his conviction that Earl Russell's management of the Declaration of Paris negotiation "strengthened the belief that [he] had started in May, 1861, with the assumption that the Confederacy was established . . . and he was waiting only for the proper moment to interpose." This, Mr. Henry Adams further asserts, seemed at the time so self-evident that no one then in the American London Legation would have doubted the proposition "except that Lord Russell obstinately denied the whole charge, and persisted in assuring Minister Adams of his honest and impartial neutrality."² If this was indeed the case, it can in the full light of subsequent revelations only now be concluded that the British Foreign Secretary was either truthful in his asseverations, or that in August, 1861, he failed to avail himself of a most admirable opportunity to carry out his fixed policy, and most effectually to "interpose."

Meanwhile, the confusion of speech intentionally created for an ulterior purpose by Seward in May and June, 1861, has continued indefinitely. Take our associate Mr. Schouler, for instance. In his *History* he says: "the Palmerston ministry

¹ Mr. Adams, apparently as the result of later experience and calmer reflection, saw occasion to revise his opinion of Earl Russell's motives and official action. In his opinion, as one of the Geneva Board of Arbitration, on the case of the *Florida*, he expressed himself as follows: ". . . I hope I may not be exceeding my just limits if I seize this occasion to do a simple act of justice to that eminent statesman. Much as I may see cause to differ with him in his limited construction of his own duty, or in the views which appear in these papers to have been taken by him of the policy proper to be pursued by Her Majesty's government, I am far from drawing any inferences from them to the effect that he was actuated in any way by motives of ill-will to the United States, or, indeed, by unworthy motives of any kind. If I were permitted to judge from a calm comparison of the relative weight of his various opinions with his action in different contingencies, I should be led rather to infer a balance of good-will than of hostility to the United States." *Papers relating to the Treaty of Washington*, IV. 162.

² *Education of Henry Adams*, 128.

connived presently at an evasion by which such vessels ceased strictly to be 'privateers' by receiving commissions from Jefferson Davis as regular war-vessels of the Confederacy."¹ And yet the distinction here referred to was manifest, fundamental and universally recognized.² The *Sumter* and the *Alabama*, for instance, were constantly referred to in the papers and memoirs of the time, sometimes as "privateers" and at other times as "pirates." The *Sumter*, as already pointed out, was a commissioned Confederate cruiser, hailing from a Confederate port, and making its way to sea through a blockading squadron.³ On the other hand, the single weak point in the *Alabama's* position was that, built and equipped at public Confederate cost, it had no home port of record, — that is, built in England and equipped in a neutral harbor of refuge, though sailing under Confederate colors it had never entered a Confederate port. It was, however, duly commissioned by a *de facto* government, and a belligerent recognized as such on land even by the United States. Except in that single respect of a home port, it was a regularly commissioned ship-of-war, — just as much so as the *Kearsarge*. That a ship-of-war, the property of a *de facto* government engaged in active war, was built evasively of law in a private ship-yard of a neutral country, and throughout its entire life never entered a harbor of the belligerent in whose service she sailed, certainly constituted an anomaly. A naval anomaly is, however, not necessarily piracy; nor is it at once apparent how a clause to that effect could, to meet a novel case, be read into the accepted treatises on international usage. British in origin, equipment and crews, the Confederate cruisers were homeless wanderers of the sea engaged in an irregular, not to say discreditable work of destruction — a work very similar in character to the wanton destruction of property by fire during a military raid. They were,

¹ *History of the United States*, vi. 126. Also *Seward at Washington*, II. 625.

² Moore, *Digest*, vii. 543-558.

³ The case of the *Sumter* subsequently led to a long diplomatic correspondence on the point referred to in the text. In his *Digest* (sec. 1315) Moore says: "Special attention may be directed to the note of Baron Van Zuylen of September 17, 1861, as a singularly forcible and able discussion of the question of asylum." "Mr. Seward, writing to Mr. Pike [our Minister to the Netherlands] on the 17th of October [1861], declared that the *Sumter* 'was, by the laws and express declaration of the United States, a pirate,' and protested against her receiving the treatment of a man-of-war." Moore, *Digest*, vii. 986.

however, still cruisers — ships of war — publicly owned and duly commissioned. In no respect privateers, they would not under any recognized interpretation of language have come within the Declaration of Paris inhibition of privateering. Neither, while engaged in a somewhat piratical work, were they in any common acceptance of the term pirates. Sailing under a recognized flag, they confined their ravages strictly to the commerce of an avowed belligerent. They were not common enemies of mankind. Semmes and his sailors were, in a word, pirates under the municipal law of the United States only in the same way and to the same extent that Gen. J. H. Morgan and his troopers when raiding in Ohio and Indiana, immediately after Gettysburg, were, under the same law, bandits.¹

It is, it is true, well established, and was then notorious, that when the Civil War began the Confederate authorities deliberately proposed to make Great Britain the basis of systematic naval operations directed against the United States. This was distinctly contrary to the principles of international comity, if not law; and yet, incredible as it now seems, the English courts in the case of the *Alexandra* maintained that practically, and subject to certain almost formal legal observances, it was a legitimate branch of British industry! Such an attitude on the part of an English tribunal seems now incredible. Yet it was then gravely assumed,² and constituted for us a sound basis for our subsequent demand for indemnity. No neutral nation, of course, has a right under any circumstances to permit itself to be made a naval base for operations against a country with which it is at peace; but its so doing does not transform an otherwise recognized weapon of warfare into a crime against the human race.

Thus, according to my present understanding of what then occurred, no ground appears for criticism of either Earl Russell or Mr. Adams in connection with the abortive negotiation of 1861. Earl Russell, adhering strictly to his policy of neutrality

¹ Rhodes, v. 313-316.

² "From the ruling of the judge it appeared that the Confederate Government might with ease obtain as many vessels in this country as they pleased without in any manner violating our laws. It may be a great hardship to the Federals that their opponents should be enabled to create a navy in foreign ports, but, like many other hardships entailed on belligerents, it must be submitted to." London *Morning Post*, August 10, 1863.

in the American conflict then in progress, was compelled to have recourse at times to what in the eyes of Mr. Adams seemed to be disingenuous evasions; but this was in order to avoid proposed commitments of the character and purport of which the Foreign Secretary had been advised by Lord Lyons. The record reveals nothing to justify a suspicion of Earl Russell's ulterior purposes entertained by Mr. Adams at the time, or which confirms the inferences and conclusions of Mr. Henry Adams since. As to Mr. Adams, he seems to have proceeded throughout with a direct straightforwardness and manifest good faith which at the time impressed Earl Russell with a feeling of confidence productive thereafter of most beneficial results. Fully believing in the soundness of the policy proposed,¹ and paying no attention to the freely expressed doubts, fears, and otherwise-minded conclusions of his colleagues and compatriots in Europe at that juncture, somewhat obtrusively thrust upon him,² Mr.

¹ *The American Case, Geneva Arbitration*, i. 77.

² [A striking example of this distinctly impertinent intrusiveness at that period of the poaching diplomat on the preserves more especially assigned to the supervision of Mr. Adams (see Adams, *Studies, Military and Diplomatic*, 363-367) was in this connection afforded by Gen. James Watson Webb, appointed Minister to Brazil. On his way to his post, by way of London, General Webb had an interview with the British Foreign Secretary. Of what passed in this interview, he at the time gave the following account in a letter to President Lincoln, dated Southampton, August 22, 1861:

"Yesterday I spent at Pembroke Lodge, with Lord John Russell and . . . we talked for two hours steadily on American affairs. . . . I am opposed *in toto* to the proposition of our Government to agree to a surrender of our right to issue letters of marque, and send forth privateers in time of war; because the time of making it exhibited weakness; because it cannot have the slightest influence upon the pending questions, and because the Senate should and would reject such a treaty, if made; and because I honestly and sincerely believe, that such a treaty would be political ruin to both you and Mr. Seward; and with my friendship for both of you, and a knowledge of the People gained in thirty-four years of editorial life, it would be weak and criminal in me, if I did not frankly say to both of you what I think; and then let the matter rest.

"Therefore I write this unofficial letter to you instead of Seward; with a request, however, that after reading it you will submit it to him for perusal. By that time I shall be on my way to the far South [Brazil]; and if either of you do not like my letter, commit it to the flames. And, in fact, if the subject be not of interest, I shall not complain if you burn it without reading.

"I told Lord John, that when Earl Ellesmere and other English statesmen at Hatchford, just before I went to Paris, said we had *refused* to unite in putting down privateering, I insisted that we never had refused our sanction to the proposition; but on the contrary, cheerfully accepted of it, *conditioned* that the European Powers would make it more philanthropic by rendering all *private* property afloat on the ocean sacred from assault in time of war as well as in peace.

Adams carried out his instructions with unquestioning good faith. There is, however, now reason to surmise that he did

Lord John replied, 'You were right; it was we who refused to put down privateering if by so doing all private property became sacred in time of war. England, you know, could not consent to that.' 'Certainly not; and I justify you as an English statesman, in consulting the interests of England by refusing your assent to our rider on your bill. Of what use would be your enormous navy, if in time of war you may not employ it against the commerce of the enemy? But what it is wise and commendable for you to do for the benefit of English interests, it is equally wise in us to do in self-defence. You refuse to respect private property belonging to your enemy in time of war, because it *is not your interest so to do*; and we refuse to put down privateering unless you go a step further, not because we have any especial love for privateering, but because it is necessary for our defence against your enormous navy, which you are compelled to keep up, and which France forces you to augment. Your Lordship knows that it is contrary to the genius of our people and the public sentiment, to keep up a large standing army, or a great naval force in time of peace; and, therefore, as I explained to Lord Ellesmere and his friends at Hatchford, and to Napoleon at Fontainebleau, we resort to *volunteers* in time of war. You do not object to our volunteers on land, why do you so to our marine volunteers, known as "privateers"? When we call land volunteers into service, we make them subject to our rules and articles of war; and when we call out our naval volunteers, we in like manner render them subordinate to the rules and regulations for the government of the navy. There is no difference between the two arms, except that the naval volunteers — the privateers — are the most *national* of the two. The officers of the land or army volunteers serve under commissions granted by the *State* authority; while in all cases, the officers commanding a privateer (our naval volunteers) are commissioned by the general government. They are, in fact, as much and more a part of the navy, as the volunteer force is a part of the army; and they render unnecessary a large navy in time of peace. War always, more or less, interferes with or altogether suspends commerce; and in time of war we invite our commercial marine to volunteer for naval service, under commissions granted by the Government, and subject to naval regulations, by holding out as an inducement the possession of all the prizes they capture. This, in the event of a war with England and the employment of our immense commercial marine, would soon put us in a position to do as much injury to your commerce as you, with your immense navy, could inflict upon ours. But let us give up the right to employ privateers, or in other words, *our* right to accept of volunteers in our naval service, and the English merchant, instead of finding it his interest to be at peace with us, would have offered him a bounty to urge the Government to war; because, with your superior naval force, you would soon drive us from the ocean and monopolize the commerce of the world.' Lord John laughed very heartily at all this and said, 'but we never asked you to dispense with privateering. The Paris conference made the suggestion, and it was not for *us* to refuse a good thing; besides, we conceded what you had so long demanded, that free ships should make free goods. But did you say all this to the Emperor?' 'Aye, and more. I expressed my astonishment that *he* should have given his assent to a proposition so palpably designed to increase the naval supremacy of England, that *it was clearly of English* origin, no matter who brought it forward.' 'And yet,' said Lord John, 'he *did* assent to it, and is in favor of it.' 'That by no means follows. He had the sagacity to perceive that our people never would assent, and, therefore, it was wise and diplomatic in him not to oppose England

not fully divine the purpose of his chief, being happily on that point less fully and correctly advised than Earl Russell, then Her Majesty's Secretary for Foreign Affairs.

As to Secretary Seward, the policy he at this juncture advocated, both directly and indirectly, as well as his utterances in pursuance thereof, are more difficult to explain. As is apparent from what has already been said, they invite analysis; and, when analyzed, they are provocative of criticism. In considering that attitude and those utterances nearly twenty years ago, Mr. Rhodes, in an extract already quoted, referred to them as indicative of an "infatuation hard to understand." To like effect Mr. Adams, in the entry in his *Diary* already quoted, wrote on receipt of Despatch No. 10, of May 21: "I scarcely know how to understand Mr. Seward." Since then the Welles *Diary* has been published, affording what is to a large extent an inside view of the Lincoln Cabinet movements. So far, however, as Seward is concerned, the enigma remains in

in her project. I do not say that such is his view of the subject; but we both know that it would have been wise and diplomatic for him so to have acted; and in so much as he is both wise and diplomatic, his having given his assent to the proposition by no means proves him to be in favor of it. My own opinion is that he would hold us in contempt and never forgive us, if we were to prove untrue to ourselves and give England this great advantage over France as well as ourselves.' Lord John then went on to say, that altogether too much importance has been given to the subject, 'but as your present Government desire it, we will make the treaty, even if, as you say, it is certain to be rejected.' I said, I hoped not, because its rejection would only lead to other complications and discussions. He replied, 'Not a bit of it. I am perfectly willing the treaty should be rejected, because I have long been of opinion that no treaty stipulations would be of any avail. War once commenced, you would only have to call your privateers "the volunteer navy," or some other equally appropriate term, instead of "privateers," change somewhat the regulations with the name, and according to your own argument they would become part of your navy for the time being, and be respected accordingly, by all other Powers. So we will give your administration the treaty they ask for, and they must then settle the matter with your Senate. They may accept or reject it at their pleasure, for it would amount to nothing; but I rather like the manner in which you put to the Emperor the advantage conceded to us by the Paris conference.'"

Webb sent a copy of this letter to Mr. Dayton, who replied, August 26:

"I have read with great care and *interest* your letter to the Prest. a copy of which you enclosed. As it is unofficial, of course you could rightfully send it to *head-quarters* direct, and I am glad you did so.

"*That negotiations* as to Privateering is likely to *break off* after all. Lord John and Mr. Thouvenel want to add an outside declaration at the time of the execution of the Treaty which I will not agree to — nor will Mr. Adams. This is of course altogether confidential, but my impression is, that with *your* letters to Seward &c. it will for the present end the matter." Ed.]

largest degree unsolved. It has been suggested that at this juncture the Secretary of State was, like every one else, "groping his way"; or, again, that he, individually, had "lost his head." Amid the sudden uncertainties and grave perplexities which surrounded him, in common with all others, neither supposition is to be dismissed as beyond reasonable consideration; but that he should then seriously and persistently have advocated a general foreign war, or that he should have exerted himself to the utmost through indirections to involve the country in such a war without any understanding reached in advance with his chief and his colleagues, seems incredible. Yet the record apparently establishes such as having been the case. He seems, in fact, to have been wrong-headed rather than to have "lost his head"; and to have persisted in a path at once devious and erroneous rather than to have been "groping his way."

Dealing with the distinct period of the Civil War between the attack on Fort Sumter and the defeat at Bull Run, it is in justice to every one concerned necessary constantly to recall the fact that it was throughout formative. It was formative as respects foreign relations quite as much as in its domestic bearings. It is in evidence and indisputable that when the Fort Sumter crisis was imminent the Secretary of State urged on the President the expediency of forcing immediately a foreign complication. There is also ground to believe, although on this head the evidence is not absolutely conclusive, that so intent was Seward on at any rate postponing a civil-war outbreak, in the hope that a foreign complication could yet be substituted therefor, that when the Fort Sumter expedition was in course of preparation he caused secret advices thereof to be conveyed to the Confederate authorities, apparently with a view of having the expedition fail without bringing on an irrevocable crisis, or at any rate having the government at Washington appear as the provoker of strife by striking the first blow.¹ This, by any and every device, he sought to postpone. He did not succeed; and the catastrophe occurred. Nevertheless, he seems even then not to have thrown off his delusion as to the possible

¹ On this point, see Bancroft, *Seward*, II. 145; letter of Montgomery Blair of May 13, 1873, in Welles, *Lincoln and Seward*, 58, 66; Welles, *Diary*, I. 9, 32; II. 160, 248.

reconciliatory effect of a foreign complication; and it continued with him until after the catastrophe at Bull Run. Indulging in a belief that Confederate resistance would prove a delusion, and would collapse under the first blow from Washington, he prepared the Despatch No. 10 of May 21. It is not generally understood that in the original draft of this highly aggressive communication Mr. Adams was instructed to confine himself "simply to a delivery of a copy of this paper to the Secretary of State [Russell], and then to break off all official intercourse with the British Government." Further instructions were then given him as to what policy should be pursued "when intercourse shall have been arrested from this cause."¹ As originally drawn, the despatch amounted practically to a declaration of war; as such, it will be remembered, it was modified in essential respects by the President only in face of strong opposition on the part of the Secretary.²

Even while penning this despatch, Seward moreover put on record an utter misapprehension of his own position, writing to his wife: "A country so largely relying on my poor efforts to save it had refused me the full measure of its confidence, needful to that end. I am a chief reduced to a subordinate position, and surrounded by a guard, to see that I do not do too much for my country." Mr. Bancroft, therefore, in his *Life*,³ does not apparently go too far when he says that at this time Seward was the "victim of an incomprehensible illusion," adding: "The only theory on which this illusion can be explained, even from his point of view, is that by giving full play to his imagination he was strengthened in the belief that the Union could not be restored unless the 'chief' could get free from his 'subordinate position' and push aside the 'guard' that was preventing him from doing too much for his country, and that all could be accomplished by means of a foreign war, which would put him in control, because it would grow out of questions within the province of his duties."

Whatever his policy may have been, therefore, it would seem that the Secretary of State was practically thwarted in his efforts to carry it out, and reduced into what he himself considered a "subordinate position." In view of what has already

¹ Nicolay and Hay, IV. 271.

² Russell, *My Diary*, July 3, 1861.

³ *Seward*, II. 173.

been said in this paper, it is hardly necessary to point out that the "guard" referred to in the foregoing extract from Mr. Bancroft's *Life* was Senator Sumner, then alluded to by Mr. Seward as a supernumerary Secretary of State in Washington, according to Mr. Welles "far too frequently consulted on controverted or disputed international questions."¹ The evidence on this head is not, however, confined to Mr. Welles. In a passage from his *Diary* already quoted, it will be remembered that Russell attributes this thwarting of action on the part of Seward largely to the intervention of Senator Sumner. Mr. Sumner was certainly in Washington at the time the Despatch No. 10 was approved by the President "with its teeth drawn," and he went back to Boston in so excited a frame of mind that Mr. Dana, whom he shortly afterwards met, wrote to Mr. Adams that he was "so full of denunciations of Mr. Seward that it was suggestive of a heated state of brain." Mr. Dana added: "He cannot talk five minutes without bringing in Mr. Seward, and always in bitter terms of denunciation. His mission is to expose and denounce Mr. Seward; and into that mission he puts all his usual intellectual and moral energy." According to Mr. Sumner, Seward was systematically "pursuing a course of correspondence, language, and manner calculated to bring England and France to coldness, if not to open rupture."² Then a mystery, what Mr. Sumner had in mind has now been disclosed. He spoke not altogether unadvisedly.³

In that portion of his History relating to this period Mr. Rhodes says: "A fair statement of Northern sentiment by the 4th of July [1861] is that, although most of the rebels would be pardoned by a gracious government, Jefferson Davis and the men captured on board of vessels bearing his letters of marque should be hanged."⁴ In other words, during the period under consideration the country as well as Mr. Seward had for the time

¹ Welles, *Lincoln and Seward*, 90, 161, 185.

² C. F. Adams Mss., Boston, June 4, 1861.

³ "Mr. Sumner, as the Chairman of the Committee on Foreign Relations, is supposed to be viewed with some jealousy by Mr. Seward, on account of the disposition attributed to him to interfere in diplomatic questions; but if he does so, we shall have no reason to complain, as the Senator is most desirous of keeping the peace between the two countries, and of mollifying any little acerbities and irritations which may at present exist between them." Russell, *Diary*, July 5, 1861.

⁴ Vol. III. 429.

being abdicated all sanity of judgment. Confident of an early and decisive military success, both the Secretary of State and the community at large were disposing in advance of the spoils and captives. The Secretary was, also, in the way natural to him, arranging a diplomatic program in which scant, if any, consideration was to be shown foreign nations. In other words, he was preparing a theatrical appeal to that spirit of American nationality in the might of which he had such implicit, if somewhat sentimental, faith.

Such then, so far as the evidence warrants conclusions, was the attitude of Mr. Seward, and such the policy he strove to impose. That policy was, it would also appear, based on several propositions almost equally erroneous. First, he quite misapprehended the situation as respected his chieftaincy in the conduct of the administration, and responsibility therefor. Second, he labored under a delusion as to the feeling existing in the community composing the Confederacy. Third, and most dangerous of all, was his deception connected with the question of privateering as a weapon in modern warfare, whether in the hands of the Confederacy as against the Union, or in the hands of the national government as against foreign nations, especially this last. As already more than once pointed out, Seward seems to have really believed that it was but necessary for the United States, as representative of democracy, to raise its hand, to cause, as he himself was wont to express it, "the world to be wrapped in fire."

That it should have been possible for a representative New York politician to indulge in good faith in such a degree of infatuation hitherto has constituted, and will probably long continue to constitute, an historical enigma. That it was in his case a passing delusion is true; as also that in its more publicly dangerous form it did not survive the shock of July 21st. Meanwhile, during the period of obsession, so to speak, the danger of privateering and the use of privateering seem to have been always present to the Secretary's mind. It was privateering, moreover, of the type of fifty years before, — that in vogue in his youth, during the War of 1812. Accordingly, in his despatch of the 21st of May, he wrote to Mr. Adams that "Happily, Her Britannic Majesty's Government can avoid all these difficulties. It invited us in 1856 to accede to the Declaration

of Paris, of which body Great Britain was herself a member, abolishing privateering everywhere in all cases and forever." He then suggests a negotiation, saying that Mr. Adams already had authority to propose the accession of the United States to the Paris Declaration, and inviting him to negotiate to that end.¹

The trouble with Mr. Seward's subsequent position was simple, — it was impossible! He wished to do, and yet not to do. He wanted to commit the insurgents as included in the sovereignty of the United States, but not to commit the United States, in case of hostilities with European powers growing out of the existing complications. He could not bring himself to admit that a blockade conducted under the rules of international law was impossible except as an act of belligerency, and that belligerency implied two parties to it. This necessary and inevitable proposition both of logic and international usage he obstinately refused to admit. In other words, so far as accession to the Declaration of Paris was concerned, Mr. Seward during the period in question seems mentally to have exerted himself to the extent of self-persuasion that the conflict in which the country was engaged was a war so far as the United States was concerned, and a war or not a war so far as the foreign powers were concerned, as the interest of the United States might dictate. Moreover, he confidently maintained it was a war conducted in accordance with established international usage, to which so far as foreign nations were affected there was but a single party, — that party representing absolute sovereignty, while, under some rule vaguely alluded to as in existence, the insurrectionary power was composed not of belligerents but solely of bandits and pirates — outlaws.

That he might possibly have succeeded in this diplomatic *tour de force*, had the United States forces achieved a decisive and brilliant success at Bull Run, is within the range of possibilities. In view of what actually occurred, this possibility is, however, hardly worthy of consideration. It is sufficient here to say that the policy of Mr. Seward during the three months in question, so far as the actual record shows, was based on misapprehension; misapprehension not less of the position he himself occupied than of the situation as it existed both in the

¹ Nicolay and Hay, iv. 273.

Confederacy and in Europe. Moreover, his contentions were quite devoid of any foundation in the accepted principles of international law. Somewhat transparent, the carrying of his scheme into actual operation would almost necessarily have resulted in a practical challenge of foreign nations at once to recognize the Confederacy as a member of the family of nations. It is difficult indeed to see how it could well have failed so to do. Ill-advised, illogical, and contradictory, the diplomatic policy pursued during this brief and early stage of the Civil War constitutes almost as complete an enigma now as it did to Mr. Adams then, or thirty years later to Mr. Rhodes. In many aspects it is, and is likely to remain, impossible of satisfactory explanation for the simple reason that it is incomprehensible.

Thus, in the outcome of this inquiry, I find myself back at the point of commencement. As a diplomatic episode, the abortive negotiation over the accession of the United States to the articles of the Declaration of Paris bore a strong family resemblance to the equally abortive though far more disgraceful and calamitous military performance known as the first Manassas advance. Both were ill-considered incidents, in no respect creditable, characteristic of a distinct because a dangerously emotional period in the history of the American people, — that is, the hundred days between Fort Sumter and Bull Run.

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